

NO. 19509

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSEPH CLYDE AMSLER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court
for the Southern District of California
Central Division

APPELLANT'S OPENING BRIEF

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Los Angeles, California 90014

Attorney for Appellant

FILED

DEC 24 1965

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I

The trial and all proceedings had were void for lack of jurisdiction of the trial court because the trial, as such, with an Oregon Judge and an Oregon staff maintaining the court, was not a trial within the state and district where the alleged crime was committed, as required by Article 3, Section 2 of the Constitution of the United States, and the trial was held in violation of due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

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A. The trial judge, being an Oregon judge from the District Court of Oregon, was unauthorized to sit in a criminal case in a District Court in California. The court was no longer a court of the state and district where the crime was committed, as required by Article 3, Section 2, United States Constitution.

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B. The Oregon clerk was not sworn in California nor authorized in California to administer oaths to prospective jurors. Prospective jurors therefore were not legally sworn and many were excused. The voir dire was

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conducted upon unsworn prospective jurors.

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C. Title 28, Section 292, purporting to authorize assignment and transfer of judges, is unconstitutional in criminal cases insofar as it purports to authorize transfer of judges from other states and districts, and violates Article 3, Section 2, United States Constitution.

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D. The transfer of the case from local United States District Judge Albert Lee Stephens, Jr. to Judge William G. East, from Oregon, for all proceedings and trial was contrary to Local Rules adopted by local judges, which rules have the force of law.

20A

II

The defendant was deprived of due process of law in that the manner and method of selecting the jury was not in accordance with the procedure and proceedings used in the State of California, the state in which the alleged crime was committed, but was in accordance with the so-called "Arizoma System", not authorized under the procedure in the State of California.

26

III

The court erred in instructions given and refused, and invaded the province of the jury, to which due exception was taken. The court's instructions virtually directed the jury to convict.

31

IV

The court erred in quashing the subpoena to produce Frank Sinatra, Sr. (R. 2974) and in refusing to call him back for further examination and further cross-examination.

38



V

Defendant was denied his constitutional right to a public trial.

43

VI

The court erred in failing to suppress the evidence of alleged confessions made by the accused. The defendant John William Irwin made an alleged confession prior to arraignment and without a search warrant or without the benefit of counsel and was without the benefit of an attorney at the time he allegedly implicated Joseph Clyde Amsler. None of the defendants had counsel at the time statements were taken from them and none had been arraigned before statements were taken in the absence of counsel representing them and in the absence of the full advice and benefit of counsel. Therefore, the use of these alleged confessions violated due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

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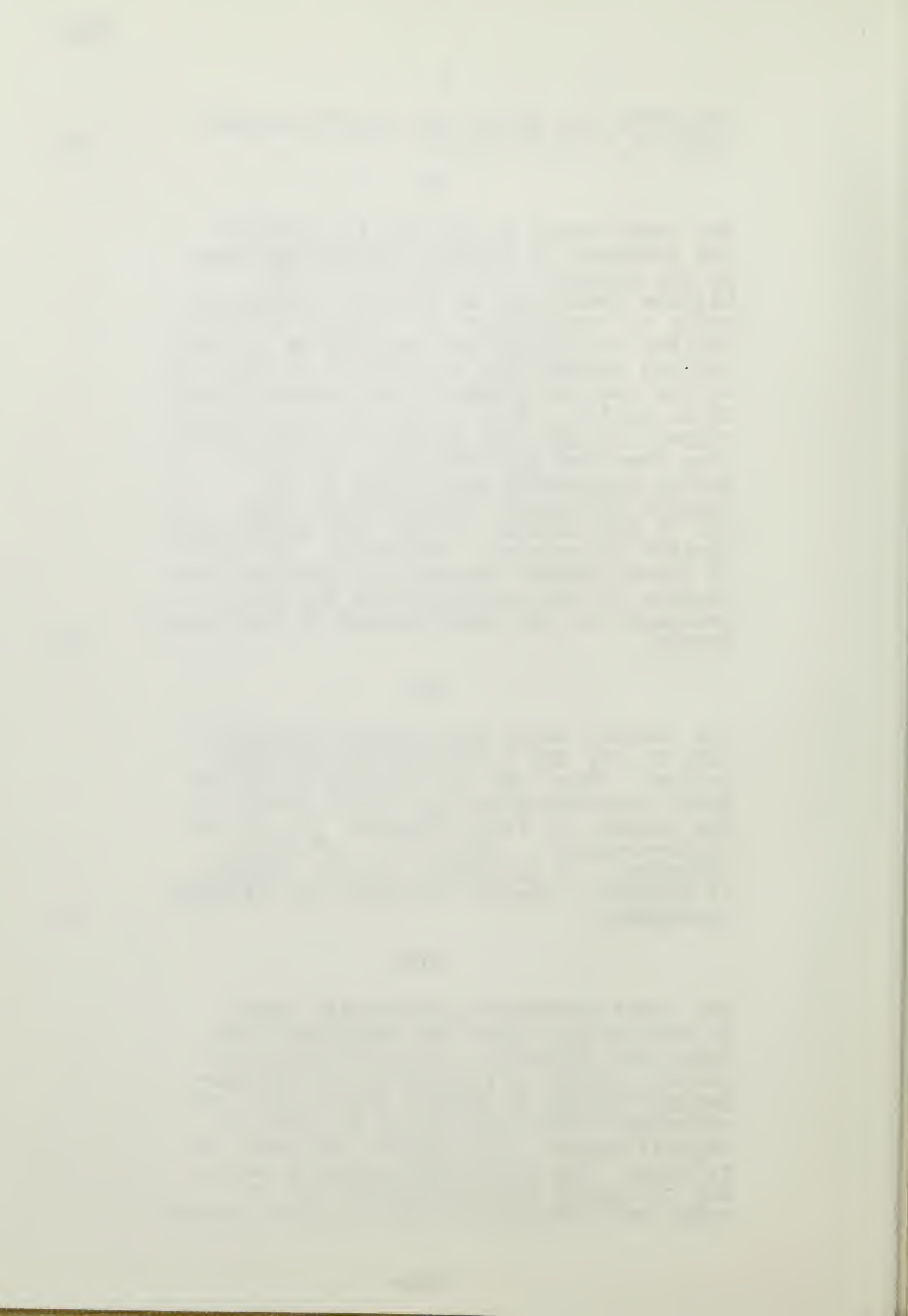
VII

The federal court was without jurisdiction to try the defendant Joseph Clyde Amsler. There was no evidence of interstate transportation by Amsler prior to the consent of Frank Sinatra, Jr. to the transportation. There was, in effect, therefore, no kidnaping as that offense is defined. Consent vitiates any alleged kidnaping.

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VIII

The court committed prejudicial error in refusing to give the defendants the names and addresses of all of the prospective jurors in violation of the mandatory statute to supply these names and addresses three days prior to trial in capital cases. The request was made and refused. The court also erred in refusing to supply the defendants with the names and addresses of all the prospective



witnesses intended to be called, three days prior to trial, as required by the mandatory statute in capital cases, to-wit: Title 18, Section 3432, U.S. Codes.

51

IX

The evidence is insufficient to support the verdicts. The verdicts are contrary to the law and the evidence. The evidence shows both implied and express consent by Sinatra, Jr. to the transaction. The acts, as described by the principal witness of the government, failed to show any true kidnaping.

52

X

Although the indictment charged six counts in which the accused was implicated, they were all one alleged transaction and the splitting up of the counts was, in effect, an effort to charge the defendant with several offenses and violated due process of law guaranteed by the Fifth Amendment to the Constitution of the United States. Only one offense was charged.

57

XI

The court erred in overruling the motions to dismiss on the grounds of duplicity. The charge of kidnaping under Section 1201 contains the charge of conspiracy and there was a duplication charging conspiracy under the conspiracy statute, thus doubling the punishment of the defendant.

58

XII

The court erred in refusing defense requests to subpoena John Hanson, an important witness for the defendant Amsler, thus violating Sixth Amendment right to process.

59

XIII

The court erred in the admission and exclusion of evidence.

60

XIV

The court erred in denying counsel for appellant Amsler the right to tape the proceedings, particularly the argument of the prosecutor.

61

XV

The prosecutor was guilty of prejudicial misconduct in presenting other evidence regarding alleged kidnaping that was highly improper. The court erred in not granting a mistrial as a result of this improper evidence that was foreign to the case, in other words, in reference to an alleged kidnaping regarding Bob Hope's son, not charged in the indictment.

62

XVI

The court committed prejudicial error in entering the jury room and discussing matters with the jury in the absence of the defendants and their counsel and then denying the motion for a mistrial. (R. 4025) The procedure violated due process of law guaranteed by the Fifth Amendment to the Constitution of the United States and also denied the right of the defendant to a public trial in all its proceedings.

66

XVII

There were illegal searches and seizures under the Fourth and Fifth Amendments to the Constitution of the United States.

72

XVIII

The court erred in denying the motions for judgments of acquittal.

72

XIX

The defendants were tried under an atmosphere of great prejudice and were denied fair trial. The court erred in failing to grant a new trial due to an interview given during the trial by Frank Sinatra,

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DEPARTMENT OF CHEMISTRY
CHICAGO, ILLINOIS 60637

TO THE HONORABLE CHAIRMAN
OF THE BOARD OF TRUSTEES
OF THE UNIVERSITY OF CHICAGO
FROM
THE DEPARTMENT OF CHEMISTRY

THE DEPARTMENT OF CHEMISTRY
has the honor to acknowledge
the receipt of your letter
of the 10th inst. and in reply
to inform you that the
same has been forwarded
to the proper authorities
for their consideration.

Very respectfully,
THE DEPARTMENT OF CHEMISTRY

W. R. BOYD, JR.

W. R. BOYD, JR., Chairman
of the Department of Chemistry
The University of Chicago
Chicago, Illinois 60637

Jr., which was published in the Los Angeles Times on the morning of February 29, 1964. (R. 2972)

72

XX

The court erred in denying a severance of the trial of Amsler from that of the other defendants, to the great prejudice of defendant Amsler.

74

XXI

The court erred in failing to permit cross-examination and confrontation of the money and in failing to suppress the evidence regarding the so-called ransom money, the defense never having had any opportunity to see or examine the so-called ransom money, whether there was any money purportedly for ransom. Use of such evidence violated the defendant's rights to due process guaranteed by the Fifth Amendment to the Constitution of the United States.

74

XXII

The court erred in limiting the cross-examination of all three defendants to one counsel, although they were separately represented by separate counsel. The court stated he would not let any other defendant cross-examine any further on the subject matter on which one counsel had examined. This was a denial of the right of confrontation of the individual defendant and of cross-examination by the individual defendant.

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OF THE

AMERICAN PEOPLE

FROM THE FIRST SETTLEMENTS

TO THE PRESENT TIME

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH CLYDE AMSLER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court
for the Southern District of California
Central Division

APPELLANT'S OPENING BRIEF

JURISDICTION

Jurisdiction is conferred by Title 28, Section 1291, U.S. Codes, and by the Rules on Appeal of the United States Court of Appeals.

The judgment of conviction, dated March 7, 1964, was entered on March 13, 1964 and notice of appeal was duly and regularly given. An order allowing the defendant to proceed in forma pauperis, having previously been made in the trial court, was duly and regularly continued on appeal.

The defendant had repeated trouble in getting a com-

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pleted record as the court reporter who reported part of the case came from Portland, Oregon, and parts of the proceedings were omitted. Demands were made to supplement the record to complete the incomplete record. Extensions of time were required to be had and were granted by the Court of Appeals to and including December 24, 1965. This appeal is being filed within the time so extended and upon a record finally completed after investigation of the incomplete record as filed in the Court of Appeals.

STATUTES, CONSTITUTIONAL PROVISIONS,

RULES AND ORDERS INVOLVED

The following statutes, constitutional provisions, rules and orders involved are set forth in full in Appendix A hereto: Title 18, Sections 371, 875(a), 1201, 1202 and 3432, U.S. Codes; the Fourth, Fifth and Sixth Amendments to the United States Constitution; Article 3, Section 2, United States Constitution; Federal Rules of Criminal Procedure, Rules 5, 17(a), 17(b) and 17(c); and Local Rules and Orders of the United States District Court for the Southern District of California, Central Division.

PRELIMINARY STATEMENT

In order that we may fully understand the relationship of the parties in this unusual case, we set forth the cast of principal characters involved herein.

Frank Sinatra, Jr., age 19, an entertainer at Harrah's Lodge on the California side at Lake Tahoe, earning \$100 a week and the last name on the marquee; occupied Room 417,

case, who selected a jury according to the "Arizona System" and tried it by Oregon procedure and standards.

Judge William G. East's entourage from Oregon, unsworn in California; his Oregon clerk, Roger B. Buchanan; his Oregon bailiff; and Joseph S. McCloskey, his Oregon court reporter, all brought to Los Angeles and held in Los Angeles at government expense for this trial.

Mrs. Betty Graydon, U.S. Commissioner at San Diego.

John Foss, a singer and friend of Frank Sinatra, Jr., a trumpet player, in the Tommy Dorsey band with Frank Sinatra, Jr. and in Room 417 with Frank Sinatra, Jr. at Harrah's Lodge at Lake Tahoe.

Ronald Bray, a friend of Barry Keenan, who was offered \$10,000 by Keenan to join in "the operation". (R. 2019)

Dean Torrance, a member of the Dean and Jan team of singers, who denied any knowledge of the participation but who later admitted that he participated, had committed perjury in his earlier testimony but was never prosecuted.

An unknown "backer" of the "project". (R. 2043)

FBI agents.

Deputy Sheriffs.

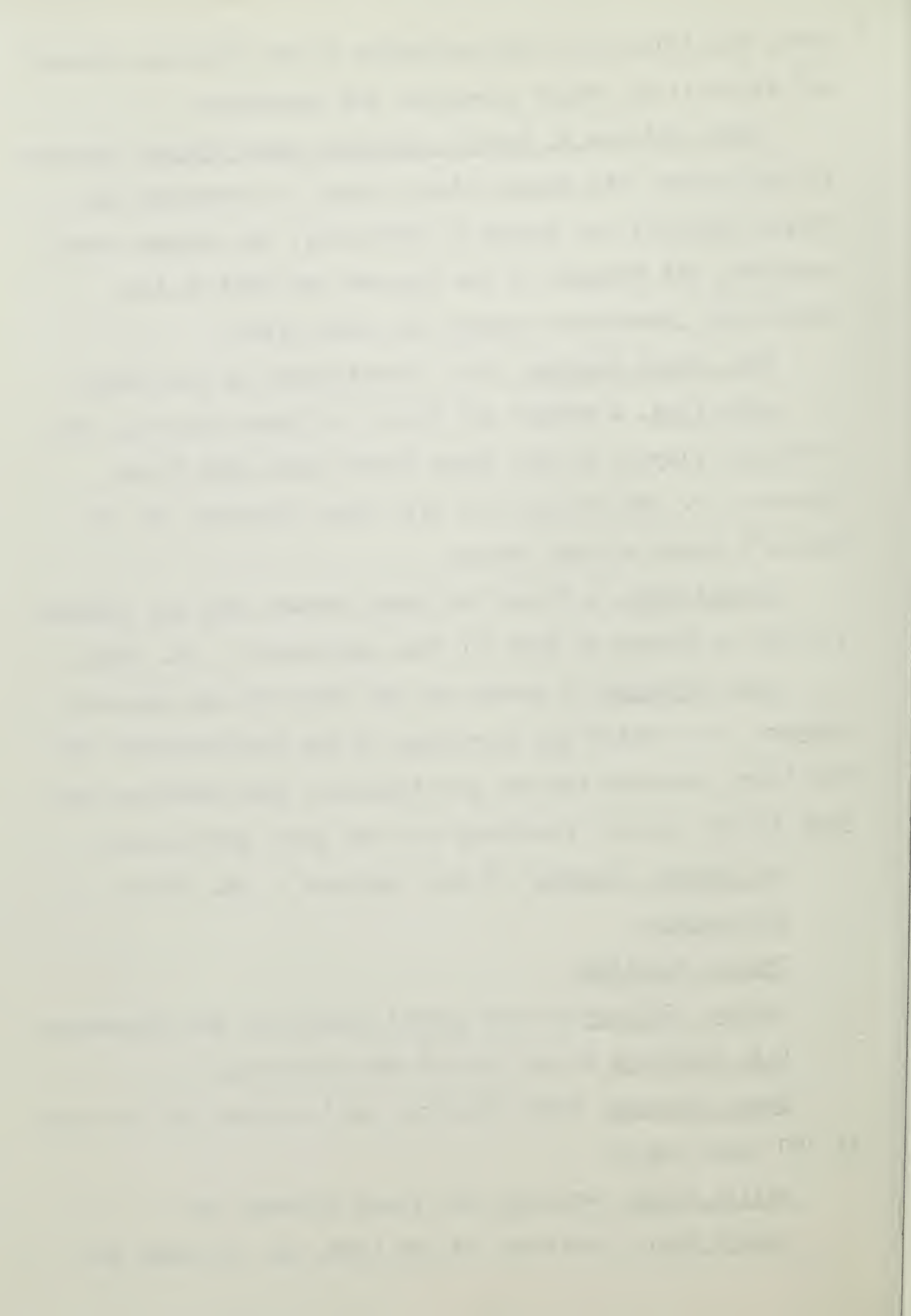
Police officers in and around roadblocks and elsewhere.

U.S. Marshals in and around the courtroom.

Nancy Sinatra, Frank Sinatra, Jr.'s mother (at her home at 700 Nimes Road).

Milton Rudin, attorney for Frank Sinatra, Sr.

Alfred Hart, president of the bank, who arranged for



the withdrawal of \$240,000 in government notes, nearly all of which was returned, and destroyed after its use.

\$239,985, allegedly in paper currency, destroyed and never actually produced in court.

Jurors and prospective jurors picked by the "Arizona System" in the Southern District of California by an Oregon judge and an unsworn Oregon court.

At least 50 television, radio and newsmen at the Sinatra home.

Newspaper reporters, radio and television men with cameras and television equipment and newspaper cameramen, barred from the second floor of the Federal Building by court order.

Francis C. Whelan, U.S. Attorney, by Thomas R. Sheridan, Assistant U.S. Attorney in charge of the prosecution of the case.

George Murphy, Assistant U.S. Attorney in the prosecution of the case.

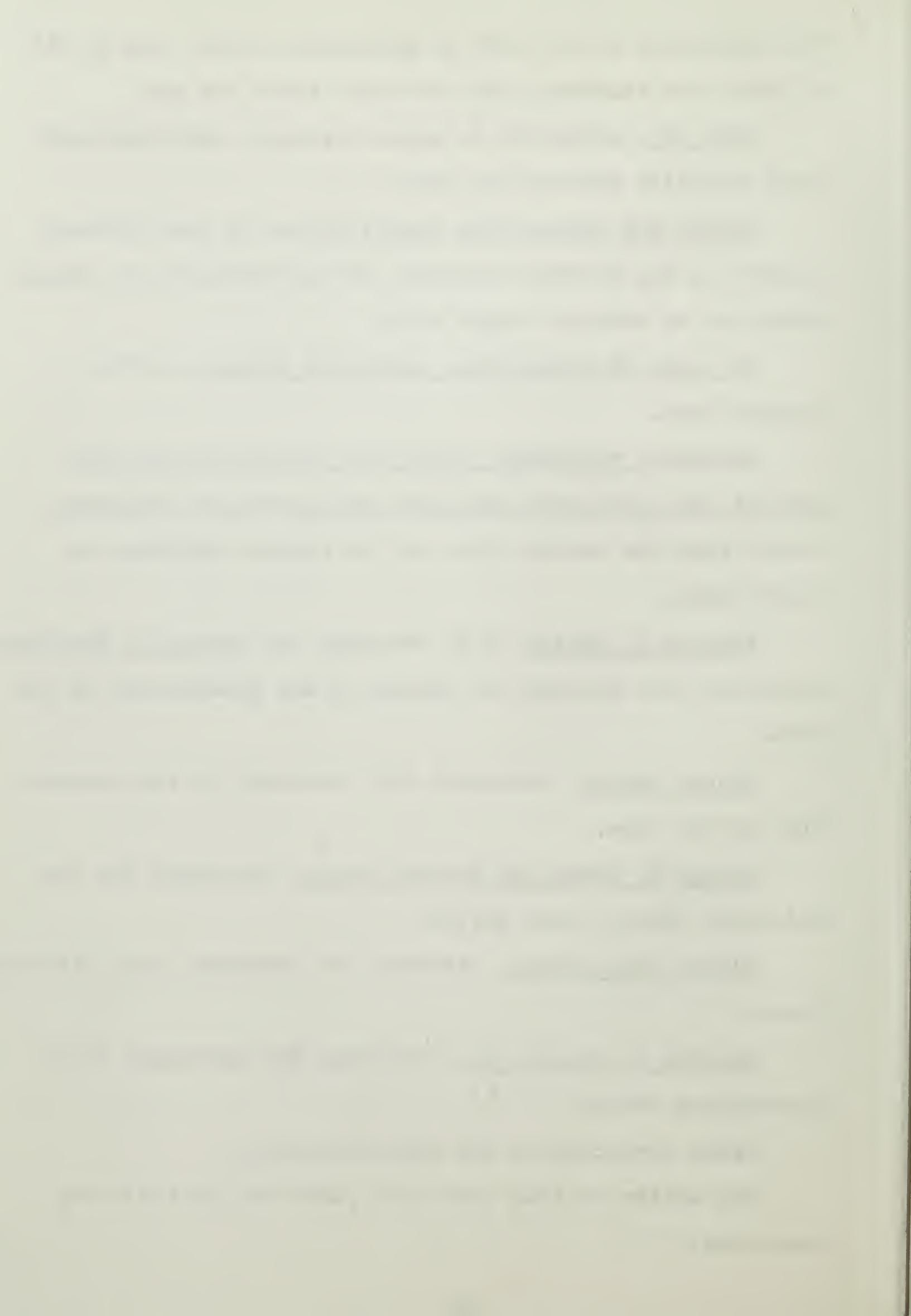
George A. Forde and Morris Lavine, attorneys for the defendant Joseph Clyde Amsler

Gladys Towles Root, attorney for defendant John William Irwin.

Charles L. Crouch, Jr., attorney for defendant Barry Worthington Keenan.

Other participants and supernumeraries.

The action in this case took place at the following locations:



Harrah's Lodge, at Lake Tahoe.

The Arizona State Fair.

A house at 8143 Mason Avenue, Canoga Park, California.

The Mapes Hotel, in Reno, Nevada.

Gasoline stations at Carson City, Nevada.

A telephone booth at Reno, Nevada, and another at Carson City, Nevada.

The home of Nancy Sinatra, 700 Nimes Road, Bel Air, California.

The FBI office in San Diego, California.

The U.S. Commissioner's office, San Diego, California.

The United States District Court, Southern District of California, Central Division, Los Angeles, California.

The time of the events herein was generally from December 8 to December 16, 1965.

STATEMENT OF FACTS

On January 2, 1963, defendant Joseph Clyde Amsler was indicted in connection with six counts of alleged kidnaping of Frank Sinatra, Jr. from South Lodge, Stateline, California, and taking him to the area of Southern California, allegedly for the purpose of ransom and reward.

Following the return of the indictment, defendant Joseph Clyde Amsler, along with his co-defendants, pursuant to Local Rules of the United States District Court, Southern District of California, Central Division, was arraigned before the Honorable Albert Lee Stephens, Jr., the judge presiding in the criminal court at the time.

IN THE SEVENTEENTH CENTURY

BY JOHN VAN DER LINDE

OF THE SOCIETY OF LONDON

IN TWO VOLUMES

LONDON

PRINTED BY J. B. ALLEN, 10, ST. MARTIN'S LANE

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THE HISTORY OF THE

ROYAL SOCIETY OF LONDON

IN THE SEVENTEENTH CENTURY

BY JOHN VAN DER LINDE

OF THE SOCIETY OF LONDON

IN TWO VOLUMES

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THE HISTORY OF THE

ROYAL SOCIETY OF LONDON

IN THE SEVENTEENTH CENTURY

Thereafter, on the date on which he was to be arraigned and proceedings heard in connection with the assignment of the case, a great irregularity occurred in that Judge William G. East, a District Judge from the United States District Court, Portland, Oregon, was assigned to the case and brought with him his entire entourage, consisting of his secretary, his law clerk, his court reporter and the clerk of his court, none of whom were sworn to act in the Southern District of California.

On the date the case was to proceed before local Southern District Judge Albert Lee Stephens, Jr., the case was transferred, without his consent, to Judge William G. East. Thereupon, objections were made to his presiding at the trial on the ground that the Constitution of the United States required that a criminal case be tried in the State and jurisdiction where the case originates or where the crime occurred and that the trial judge is a part of the trial court and procedure which must be local and not from another State and District.

All these challenges to the jurisdiction of the Court were overruled. (See proceedings of January 20, 1964, p. 2, et seq., in transcript entitled "Motion to Produce".)

The court said he was assigned to the Los Angeles District by the designation by the Chief Judge under Section 292, Subsection (d) of Title 28. However, this Section might well apply to the handling of civil cases but flies squarely in conflict with the provisions of Article 2,

Section 3 of the Constitution of the United States and also with Local Rules as to how criminal cases should be assigned.

Thereafter, Judge East continued, over objections, to hear matters and try the case.

He proceeded under what he called the "Arizona System" to have the jury selected, a system quite foreign to that practiced in California and quite unused by local counsel. On the second day of the trial procedure, counsel objected and called attention to the fact that the judge's own clerk, whom he had brought, was not sworn to administer oaths and that he was unauthorized to administer any oaths to any prospective jurors or any jurors. By that time the court had already selected a panel of jurors and had excused a number of jurors who had been questioned but who had not been sworn by a clerk authorized to administer the oath and none of the jurors in the box had been sworn by a clerk of the United States District Court for the Southern District of California authorized to administer any oaths.

Thereupon, Judge East took it upon himself to administer an oath to the jurors in the box who had remained and to continue the trial of the case with these jurors, although he, himself, was not even authorized by local law to administer any oaths.

Thereupon, all of his proceedings and procedure were challenged as null and void and as not authorized. All of these objections were overruled. (See transcript of Janu-

ary 20, 1964, pp. 1-13)

Defendant Amsler, along with others, made motions to suppress all the evidence and all the statements taken from the accused on the grounds that they were taken prior to arraignment and that they were without the benefit of counsel. All these motions were denied and the court proceeded to trial. The motion to suppress the alleged confessions and statements of the defendants, and each of them, was denied. The court also granted bills of particular, in part, and denied bills of particular, in part.

Briefly stated, Frank Sinatra, Jr., an entertainer and son of the moving picture star and entertainer, Frank Sinatra, Sr., was playing at Harrah's Lodge at Stateline, California. It was the prosecution's theory that the two defendants, Barry Worthington Keenan and Joseph Clyde Amsler, had seized young Sinatra at his room at Stateline, California, transferred him to Nevada and back into California, and held him for ransom of \$240,000.

Within a short time after young Sinatra left Stateline, a roommate notified the police that Sinatra, Jr. had been kidnaped. A roadblock was set up between Nevada and California and when the automobile in which Keenan and Amsler and Sinatra, Jr. were riding reached this roadblock, young Sinatra made disparaging remarks about the police, and he said, in effect, "These police bug me."

In his cross-examination he admitted that he then consented to the ride. At least three times during his cross-

examination young Sinatra admitted consent to the ride and at no time did he cry out or identify himself to the police who stopped this vehicle and other vehicles going through.

Sinatra was taken to a house at 8143 Mason Avenue, Canoga Park, California, where he was kept until after negotiations with his father were completed. It was testified that during part of the time that young Sinatra was kept in the Mason Avenue house, Amsler was asleep and Sinatra, who was not tied or restrained in any way, made no attempt to leave the house, the doors of which were unlocked.

Sinatra left the car on Mulholland Drive and was picked up by the Bel-Air Patrol and returned to his mother's house in a patrol vehicle, where he himself had hidden in the trunk. A host of newsmen, photographers and television and radio personnel greeted him and voluminous pictures were taken of him and broadcast. His words to his father, the first person he saw in front of his mother's home, were "I'm sorry, Dad."

Summaries of the testimony of each of the principal witnesses are set forth in the Appendix hereto.

SPECIFICATION OF ERRORS

The appellant specifies the following errors in the record and proceedings:

1. The trial and all proceedings had were void for lack of jurisdiction of the trial court because the trial, as such, with an Oregon judge and an Oregon staff maintaining the court, was not a trial within the State and



District where the alleged crime was committed, as required by Article 3, Section 2 of the Constitution of the United States, and the trial was held in violation of due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

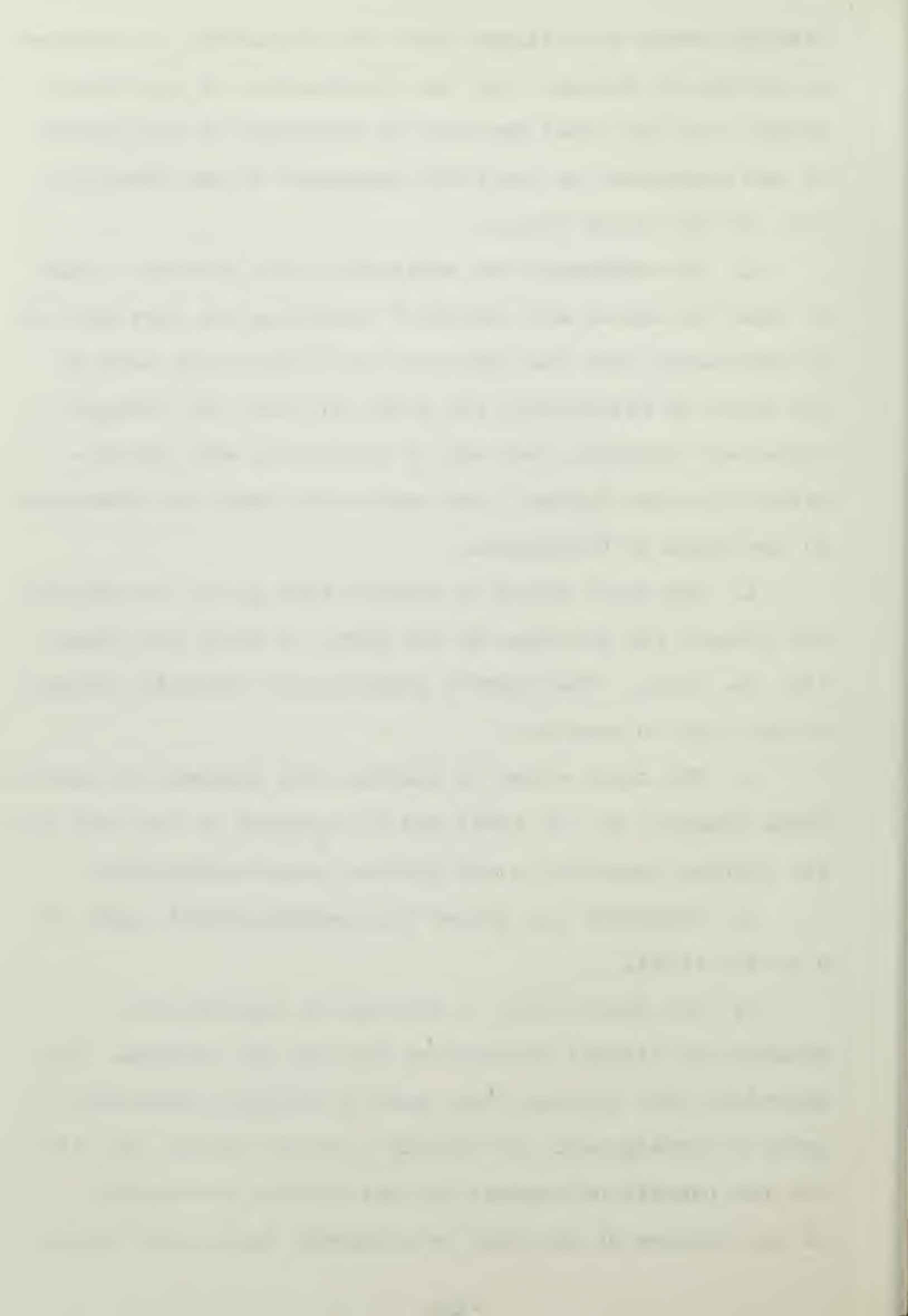
2. The defendant was deprived of due process of law in that the manner and method of selecting the jury was not in accordance with the procedure and proceedings used in the State of California, the State in which the alleged crime was committed, but was in accordance with the so-called "Arizona System", not authorized under the procedure in the State of California.

3. The court erred in instructions given and refused, and invaded the province of the jury, to which due exception was taken. The court's instructions virtually directed the jury to convict.

4. The court erred in quashing the subpoena to produce Frank Sinatra, Sr. (R 2974) and in refusing to call him back for further examination and further cross-examination.

5. Defendant was denied his constitutional right to a public trial.

6. The court erred in failing to suppress the evidence of alleged confessions made by the accused. The defendant John William Irwin made an alleged confession prior to arraignment and without a search warrant or without the benefit of counsel and was without the benefit of an attorney at the time he allegedly implicated Joseph



Clyde Amsler. None of the defendants had counsel at the time statements were taken from them and none had been arraigned before statements were taken in the absence of counsel representing them and in the absence of the full advice and benefit of counsel. Therefore, the use of these alleged confessions violated due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

7. The federal court was without jurisdiction to try the defendant Joseph Clyde Amsler. There was no evidence of interstate transportation by Amsler prior to the consent of Frank Sinatra, Jr. to the transportation. There was, in effect, therefore, no kidnaping as that offense is defined. Consent vitiates any alleged kidnaping.

8. The court committed prejudicial error in refusing to give the defendants the names and addresses of all of the prospective jurors in violation of the mandatory statute to supply these names and addresses three days prior to trial in capital cases. The request was made and refused. The court also erred in refusing to supply the defendants with the names and addresses of all the prospective witnesses intended to be called, three days prior to trial, as required by the mandatory statute in capital cases, to-wit: Title 18, Section 3432, U.S. Codes.

9. The evidence is insufficient to support the verdicts. The verdicts are contrary to the law and the evidence. The evidence shows both implied and express con-



sent by Sinatra, Jr. to the transaction. The acts, as described by the principal witness of the government, failed to show any true kidnaping.

10. Although the indictment charged six counts in which the accused was implicated, they were all one alleged transaction and the splitting up of the counts was, in effect, an effort to charge the defendant with several offenses and violated due process of law guaranteed by the Fifth Amendment to the Constitution of the United States. Only one offense was charged.

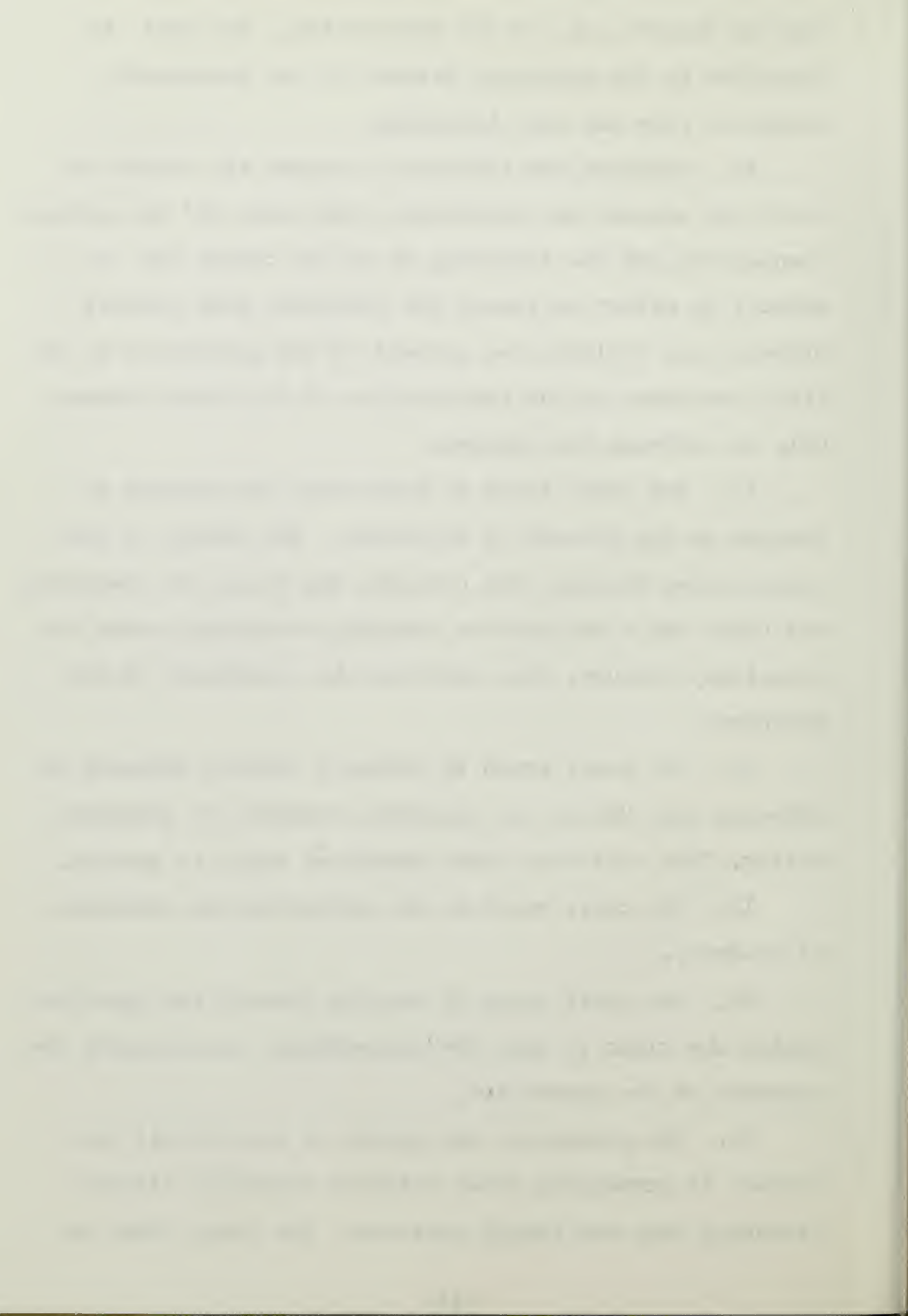
11. The court erred in overruling the motions to dismiss on the grounds of duplicity. The charge of kidnaping under Section 1201 contains the charge of conspiracy and there was a duplication charging conspiracy under the conspiracy statute, thus doubling the punishment of the defendant.

12. The court erred in refusing defense requests to subpoena John Hanson, an important witness for defendant Amsler, thus violating Sixth Amendment right to process.

13. The court erred in the admission and exclusion of evidence.

14. The court erred in denying counsel for appellant Amsler the right to tape the proceedings, particularly the argument of the prosecutor.

15. The prosecutor was guilty of prejudicial misconduct in presenting other evidence regarding alleged kidnaping that was highly improper. The court erred in



not granting a mistrial as the result of this improper evidence that was foreign to the case, in other words, in reference to an alleged kidnaping regarding Bob Hope's son, not charged in the indictment.

16. The court committed prejudicial error in entering the jury room and discussing matters with the jury in the absence of the defendants and their counsel and then denying the motion for a mistrial. (R. 4025) The procedure violated due process of law guaranteed by the Fifth Amendment to the Constitution of the United States and also denied the right of the defendant to a public trial in all its proceedings.

17. There were illegal searches and seizures under the Fourth and Fifth Amendments to the Constitution of the United States.

18. The court erred in denying the motions for judgments of acquittal.

19. The defendants were tried under an atmosphere of great prejudice and were denied fair trial. The court erred in failing to grant a new trial due to an interview given during the trial by Frank Sinatra, Jr., which was published in the Los Angeles Times on the morning of February 29, 1964. (R. 2972)

20. The court erred in denying a severance of the trial of Amsler from that of the other defendants, to the great prejudice of defendant Amsler.

21. The court erred in failing to suppress the evi-

dence regarding the so-called ransom money. The defense never had any opportunity to see or examine the so-called ransom money, whether there was any money purportedly for ransom. Use of such evidence violated the defendants' rights to due process guaranteed by the Fifth Amendment to the Constitution of the United States.

22. The court erred in limiting the cross-examination of all three defendants to one counsel, although they were separately represented by separate counsel. The court stated he would not let any other defendant cross-examine any further on the subject matter on which one counsel had examined. This was a denial of the right of confrontation of the individual defendant and of cross-examination by the individual defendant.

SUMMARY OF THE ARGUMENT

The appellant, Joseph Clyde Amsler, along with Barry Worthington Keenan and John William Irwin, were indicted by the grand jury on six counts allegedly growing out of the purported kidnaping of Frank Sinatra, Jr. from Harrah's Lodge, on the California side of the Lodge, on or about December 8, 1963, and transporting him through Nevada to 8143 Mason Avenue, Canoga Park, in Los Angeles County, California, purportedly for the purpose of seeking \$240,000 from Frank Sinatra, Sr.

The indictment contained six counts, the first and the sixth counts being for conspiracy involving the same transaction, Count One being brought under Title 18, Section



375(a), and Count Six being brought under Title 18, Sections 1201 and 1202.

Count Two involved the charge against John William Irwin of aiding, abetting, counseling, inducing, commanding and procuring the commission of the offense by Keenan and Amsler on or about December 8, 1963.

Count Three alleged that John William Irwin made a telephonic call to Reno, Nevada, making a demand for ransom and reward on December 10 at 9:05 a.m. and that Keenan and Amsler aided and abetted in this offense.

Count Four charged Irwin with having made a telephone call at 12:50 p.m. to Carson City, Nevada, making a demand for ransom and that he was aided and abetted by Keenan and Amsler.

Count Five charged that on December 10, at 1:10 p.m., he made a telephone call to Carson City, Nevada, making a demand for ransom and that he was aided and abetted by Keenan and Amsler.

Count Six charged a violation of Section 1202 of Title 18 in that they knowingly and wilfully received, possessed and disposed of \$239,985 which had, on December 11, 1963, been delivered as ransom and reward in connection with the alleged kidnaping of Frank Sinatra, Jr., who had theretofore been kidnaped and then transported in interstate commerce from Stateline, California, into the State of Nevada and then into Los Angeles County, California, in violation of Title 18, Section 1201, U.S. Codes.

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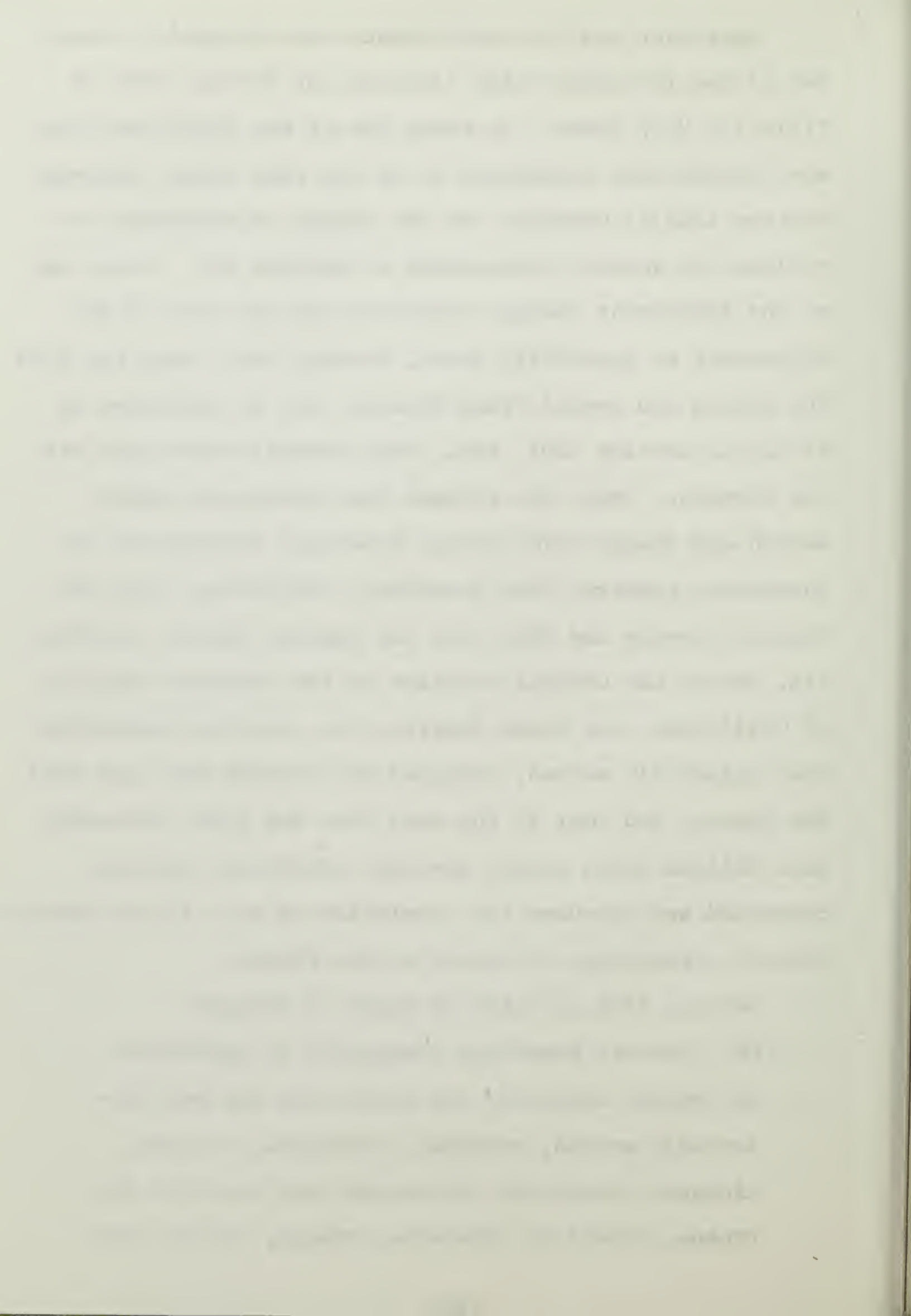
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Appellant and his codefendants were charged in Count Two of the indictment with violation of Section 1201 of Title 18, U.S. Codes. In Count One of the indictment they are charged with conspiracy to do the same thing, although Section 1201(c) provides for the charge of conspiracy to violate the section independent of Section 371. Count One of the indictment charges conspiracy on the part of the defendants to unlawfully seize, kidnap, carry away and hold for ransom and reward Frank Sinatra, Jr. in violation of 18 U.S.C. Section 1201, etc., with several overt acts set out therein. Count Two alleges that defendants Barry Keenan and Joseph Clyde Amsler knowingly transported in interstate commerce from Stateline, California, into the State of Nevada and then into Los Angeles County, California, within the Central Division of the Southern District of California, one Frank Sinatra, Jr., who had theretofore been unlawfully seized, kidnaped and carried away and held for ransom, and that at the said time and place defendant John William Irwin aided, abetted, counseled, induced, commanded and procured the commission of the alleged offense. (Page 6, Transcript of Record of the Clerk.)

Section 1201 of Title 18 reads as follows:

"(a) 'Whoever knowingly transports in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away and held for ransom, reward or otherwise, except, in the case

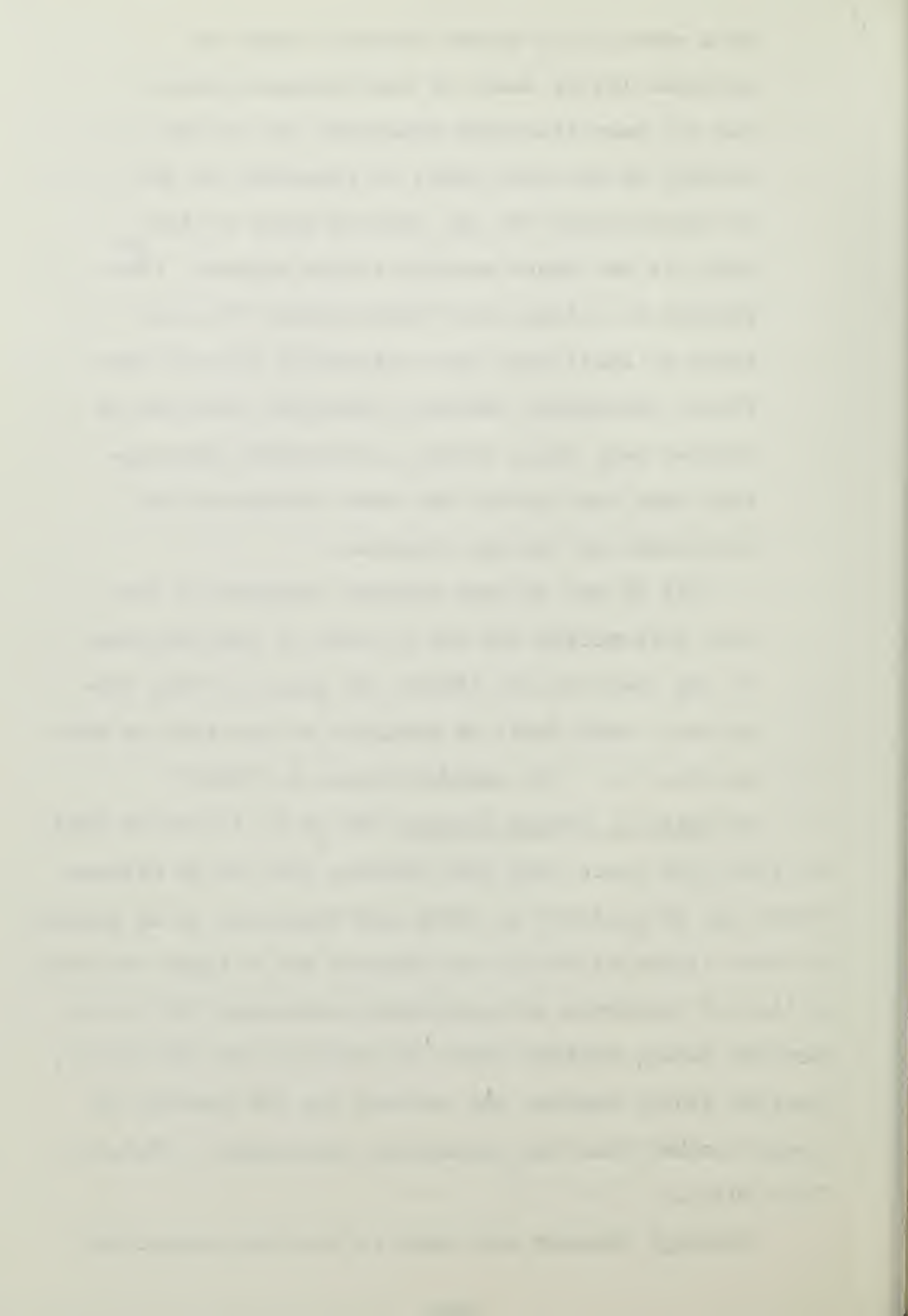


of a minor, by a parent thereof, shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed. ^(b) /The failure to release the victim within 24 hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.

"(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished as provided in subsection (a). (As amended August 6, 1956)"

In Smith v. United States, 360 US 1, 3 L.ed.2d 1041, at 1046, the court held that Section 1201 is an offense which may be punished by death and therefore it is covered by such rights as whether an accused has a right to obtain a list of veniremen and government witnesses (18 U.S.C., Section 3432); whether venue is properly set (18 U.S.C., Section 3235); whether the accused has the benefit of twenty rather than ten peremptory challenges. (F.R.C.P. Rule 24(b).)

Although demands were made to see the prospective



jury list, these were denied by the court. Furthermore, the prosecution did not furnish the list of witnesses three days prior to the trial, nor did the court allow twenty challenges, but instead limited the defense to ten challenges. (Transcript docketed June 10, 1965, p. 20) The court held his system of selecting jurors was "a fair constitutional way to draw a jury" (R. 104), whereupon challenges took place.

The court ordered the government to supply the defendants with a dily list of witnesses that it expected to call during the following day. (R. 14, Transcript docketed June 10, 1965, Vol. II) The court later stated it expected the defense to supply the government with the names and list of its witnesses in advance of their appearance.

In addition to the foregoing, a brief summary of the argument is set forth in the section of this brief set out above entitled "Specification of Errors."

ARGUMENT

I

THE TRIAL AND ALL PROCEEDINGS HAD WERE VOID
FOR LACK OF JURISDICTION OF THE TRIAL COURT
BECAUSE THE TRIAL, AS SUCH, WITH AN OREGON
JUDGE AND AN OREGON STAFF MAINTAINING THE
COURT, WAS NOT A TRIAL WITHIN THE STATE AND
DISTRICT WHERE THE ALLEGED CRIME WAS

COMMITTED, AS REQUIRED BY ARTICLE 3, SECTION 2 OF THE CONSTITUTION OF THE UNITED STATES, AND THE TRIAL WAS HELD IN VIOLATION OF DUE PROCESS OF LAW GUARANTEED BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

A. THE TRIAL JUDGE, BEING AN OREGON JUDGE FROM THE DISTRICT COURT OF OREGON, WAS UNAUTHORIZED TO SIT IN A CRIMINAL CASE IN A DISTRICT COURT IN CALIFORNIA. THE COURT WAS NO LONGER A COURT OF THE STATE AND DISTRICT WHERE THE CRIME WAS COMMITTED, AS REQUIRED BY ARTICLE 3, SECTION 2, UNITED STATES CONSTITUTION.

B. THE OREGON CLERK WAS NOT SWORN IN CALIFORNIA NOR AUTHORIZED IN CALIFORNIA TO ADMINISTER OATHS AT THE TIME THAT HE PURPORTEDLY ADMINISTERED OATHS TO PROSPECTIVE JURORS. PROSPECTIVE JURORS THEREFORE WERE NOT LEGALLY SWORN AND MANY WERE EXCUSED. THE VOIR DIRE WAS CONDUCTED UPON UNSWORN PROSPECTIVE JURORS.

C. TITLE 28, SECTION 292, PURPORTING TO AUTHORIZE ASSIGNMENT AND TRANSFER OF JUDGES, IS UNCONSTITUTIONAL IN CRIMINAL CASES INsofar AS IT PURPORTS TO AUTHORIZE TRANSFER OF JUDGES FROM OTHER STATES AND DISTRICTS, AND VIOLATES ARTICLE 3, SECTION 2, UNITED STATES CONSTITUTION.

D. THE TRANSFER OF THE CASE FROM LOCAL UNITED STATES DISTRICT JUDGE ALBERT LEE STEPHENS, JR., TO JUDGE WILLIAM G. EAST, FROM OREGON, FOR ALL PROCEEDINGS AND TRIAL WAS CONTRARY TO LOCAL RULES ADOPTED BY LOCAL JUDGES, WHICH RULES HAVE THE FORCE OF LAW.

The following occurred at the morning session of the court on Tuesday, February 11, 1964:

"THE COURT: I think I will take up a short matter with the jury first, Mr. Lavine, if you will excuse me.

"Members of the jury, yesterday it was called to the court's attention that the Acting Clerk of this Court, Mr. Don Roberts, who is accompanying the court from Portland to here and is a duly appointed and Acting Deputy Clerk of the Court from the District of Oregon and primarily assigned with duties to the court room of myself, he is not in fact designated as a Deputy Clerk of this District. And while it is not true, as Mr. Bumble said, that the law is as is, it is exact. I learned some time ago that there are no shortcuts to be taken; and since it has been called to the court's attention that the oath that was given to you both as to your qualifications as potential jurors as well as your oath to well and truly try the cause was administered by Mr. Roberts, who was, in fact, occupying a properly constituted

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office of the court, I am quite of the opinion that it was a good and valid oath for you. But if I might use an expression of my old-time law partner, out of an abundance of precaution, I shall ask you to take the oath from the court and determine whether or not you reaffirm the answer that you gave. So if you will bear with me with this explanation, I will again ask you to take the following oath: Will each of you raise your right hand. (All jurors raise right hands.)

"Do each of you solemnly swear that the answers that you gave in answer to the questions placed to you upon your qualifications to act as a juror in the cause now pending were full and true according to the best of your knowledge and belief?

"(Jurors answer in the affirmative.)

"And if you will continue, do each of you promise and swear that you will well and truly try and a just and true verdict in this cause return based solely upon the evidence produced in the open court, interpreted under the law given to you in the instructions by the court?

"(Jurors answer in the affirmative.)

"THE COURT: You may proceed, Mr. Lavine.

"MR. LAVINE: May it please the court, may the record show that we object to the jurisdiction of your Honor and this court --

"THE COURT: I am sorry. I beg your pardon. My attention was diverted. May I receive a message?

"MR. LAVINE: I am sorry I continued speaking.

"(Whereupon a pause took place in the proceedings.)

"THE COURT: Yes, Mr. Lavine.

"MR. LAVINE: May the record show two things. First of all, that the proceeding which your Honor conducted this morning after the jury was sworn was not a proceeding conducted in respect to the respective jurors and that the oath that was given to them was given by the Oregon clerk.

"THE COURT: I will let the record stand or fall on itself.

"MR. LAVINE: Thank you. And that we therefore object to the proceedings as violative of the rules of the District Court of the United States and due process of law guaranteed by the Fifth Amendment to the Constitution of the United States. We would also like to register the objection which I have heretofore made, that your Honor is without jurisdiction to try this case because you are an Oregon judge and because of the objections heretofore made, and I would like to have a stipulation, if I may, that that objection may be deemed for each day so I don't

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"THE COURT: I well understand your position about it, Mr. Lavine, and I accept it on behalf of all of the defendants, and it may stand as a continuing objection and it will be overruled.

"MR. LAVINE: Thank you, your Honor."

(Transcript of Feb. 11, 1964 (Defense Arguments), pp. 4-6)

Thereafter, the court generally opened with the following statement:

"MR. ROGER B. BUCHANAN (Bailiff): Hear Ye, Hear Ye, the Honorable United States District Court for the Southern District of California is now in session, the Honorable William G. East on Special Assignment from the District of Oregon presiding."

It is respectfully submitted that the court was and is without jurisdiction to have proceeded under the circumstances. The jurors who were being impanelled were never sworn and the only jurors who were purportedly sworn were those in the box and they were sworn by the Oregon judge, who had not been delegated by the President of the United States, or appointed by him, to sit in the Southern District of California, Central Division, nor was there jurisdiction to place anyone else in this area. This was a violation of due process of law guaranteed by the Fifth Amendment to the Constitution of the United

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States.

The requirement of Article 3, Section 2 of the Constitution is that all crimes shall be tried by a jury in the State and District where the crime allegedly occurred.

The trial encompasses a court with a judge and all personnel of the State and District where the crime allegedly occurred and not some other State and District. A judge is an integral part of a trial and no trial can be held without a judge.

It is a matter of common knowledge that federal judges are selected from the State and District where trials are held. They are appointed by the President of the United States on the recommendation of the Senator from the State and require the approval of the Senate thereafter. The only person who would be authorized to move the judge or reappoint him to another District would be the President, with the approval of the Senate.

Jurisdiction, therefore, to try the case in the State and District is jurisdiction of the court and the judge appointed for that court, in this case California. Congress alone may adopt penal legislation but the place of trial has been set by the Constitution.

The Constitution provides for Congress to define and punish piracies and felonies committed on the high seas and offenses against the laws of nations (Article 1, Section 8, Clause 10) separately from crimes committed against the States. These do not encompass that they

should be tried other than as directed at the place and by the persons authorized.

Article 3, Section 1, Clause 1 of the Constitution provides that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may, from time to time, ordain and establish. The District Courts only have jurisdiction within their Districts and constitute only the judges appointed in that District insofar as criminal cases are concerned.

We respectfully submit, therefore, that when the trial judges of the Southern District of California were removed from the case, the trial court lacked jurisdiction to proceed. Any procedure thereafter violated due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

The trial also proceeded in violation of Local Rules as to the assignment and distribution of criminal cases. Chapter II, Rule 3, Local Rules adopted by the United States District Judges of the Southern District of California, Central Division, provided that all criminal cases should go to the Master Calendar Judge assigned to criminal cases. That judge, at the time, was Albert Lee Stephens, Jr. Without his knowledge or consent, and in violation of this rule, the case on the morning of arraignment was transferred from his court to Judge William G. East, an Oregon judge assigned on a temporary basis.

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This, we respectfully submit, violated the Local Rules of Court and violated due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

Local Rules adopted by the judges have the force of law and the procedure which they have agreed upon should be carried out and cannot be violated by the Presiding Judge or anyone else without violating due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

II

THE DEFENDANT WAS DEPRIVED OF DUE PROCESS OF LAW IN THAT THE MANNER AND METHOD OF SELECTING THE JURY WAS NOT IN ACCORDANCE WITH THE PROCEDURE AND PROCEEDINGS USED IN THE STATE OF CALIFORNIA, THE STATE IN WHICH THE ALLEGED CRIME WAS COMMITTED, BUT WAS IN ACCORDANCE WITH THE SO-CALLED "ARIZONA SYSTEM", NOT AUTHORIZED UNDER THE PROCEDURE IN THE STATE OF CALIFORNIA.

The court committed prejudicial error and denied the defendant due process of law guaranteed by the Fifth Amendment to the Constitution of the United States in the manner of the selection of the jury. The jury was selected according to the so-called "Arizona system" and limited the defendant to ten challenges in this capital case, in contravention to the provisions of Rule 24, and particularly Rule 24(b), Rules of Criminal Procedure, and

Title 18, Section 3432, U.S. Codes. The jury in this case was irregularly drawn and was not properly sworn or selected.

At the session on February 10, 1964, the following occurred (Second Supplemental Transcript, Vol. 2, docketed June 10, 1965, pp. 101-104):

'MR. LAVINE: -- we respectfully challenge Your Honor's order of challenges as unconstitutional, as a violation of due process of law under the Fifth Amendment to the Constitution of the United States and not the practice generally followed in this area or this District and only followed by two judges in this area, and we respectfully urge that this is not -- this would cut down mathematically our number of challenges for this reason: That we are now faced with giving ten challenges as against 37 possible jurors, and this would cut down the number which the law permits us to have. In order words, if we had 12 jurors in the box and we challenged two, the Government one, two, and then jurors are replaced as they are challenged, we may never get to our list of ten. We may be satisfied before that time. Now, if we are required to excuse jurors who are not even called at this time and who are not among the first 12, then we are placed in a mathematical position that cuts down our number of challenges. And we think this was not the practice

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DR. J. H. DILLON

intended by Congress or by the makers of the rules.

I have examined Rule 24 of the Rules for the District Courts for the United States, and I think that rule contemplates that we first pick 12 jurors and that a jury of 12 persons is a common law jury that is met by the Constitution to try the cases. And we jointly -- I think I speak for all counsel in this objection -- request that Your Honor, at least to the matter of challenges, revert to the practice which we have had generally in this District and request that the 12 -- that we be allowed to exercise our challenges as against the 12 rather than as against the 37.

"I think Mrs. Root also wishes to comment on that. You go ahead.

"MRS. ROOT: If Your Honor please, I understand that the three separate challenges that Your Honor has given us each for the defendant includes the alternate jurors?

"THE COURT: No, it does not.

"MRS. ROOT: Then it is 13, plus the one per defendant for each alternate juror, is that correct?

"THE COURT: No, the Court advised you that the defendants and the Government proposed that you have one challenge each to the four proposed -- or what is left of the proposed alternates.

"MRS. ROOT: That was our question, if your

Honor pleases.

"THE COURT: You don't have to consider alternates at this stage at all.

"MRS. ROOT: So that in the event that there is a challenge to be exercised as against the alternates, we would have that in excess of the original as given?

"THE COURT: Right.

"MRS. ROOT: That you very much, if your Honor pleases. I think that that clears the entire matter.

"MR. LAVINE: It doesn't clear it as far as my objection is concerned.

"THE COURT: Well, I understand.

"MR. LAVINE: But only as to the alternates that she has referred to now.

"THE COURT: I understand your position about it. It doesn't make any difference in the Court's opinion whether the juror has already been called or waits until you exercise your challenge and waits until he takes his seat. They are all here, and they are in the same rotation whether they be called or not. So I deny your motion.

"MR. CROUCH: Your Honor, I was just going to add something before you made that last comment. You jumped too fast for me. But may I add just one comment to Your Honor?

"THE COURT: Yes, you may.

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"MR. CROUCH: As a practical matter, you may have -- in other words, in exercising ten challenges, you may have certain jurors where one may be a little more subject to a challenge than another. Well, we would like the opportunity, if we have 12 people in the jury box, to look at that 12 right there before us and exercise our challenges. It may turn out that we are exercising challenges which never will be used further down the line when we actually could be using that same challenge for a person who winds up in the box, who may be less acceptable to us than --

"THE COURT: You are arguing against Mr. Lavine's motion. He wants the first 12. You have got them.

"MR. CROUCH: No, Your Honor.

"MR. LAVINE: I didn't say that.

"THE COURT: Well, I have ruled on the matter. I am satisfied this is a fair constitutional way to draw a jury, and I propose to follow it. Now, I will ask counsel to exercise your peremptories."

It is submitted that the provisions of Rule 24, Federal Rules of Criminal Procedure, set forth in full in the appendix hereto, are in accordance with due process and the procedure in the State of California and it is respectfully submitted that the court erred in following any other procedure. Furthermore, kidnaping being a capital offense entitled defendants to 20 challenges, which they were denied.

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THE COURT ERRED IN INSTRUCTIONS GIVEN AND REFUSED, AND INVADED THE PROVINCE OF THE JURY, TO WHICH DUE EXCEPTION WAS TAKEN. THE COURT'S INSTRUCTIONS VIRTUALLY DIRECTED THE JURY TO CONVICT.

The court instructed the jury, in respect to Count Two of the indictment:

"In connection with Count Two, you are instructed that an act of Congress provides: 'If two or more persons conspire either to commit an offense against the United States and any one or more such persons do any act to effect the object of the conspiracy, each shall be guilty of a crime.'" (R. 4233)

However, Count Two did not charge conspiracy. Count Two of the indictment charged the substantive offense of kidnaping. Count One charged conspiracy under Section 371 of Title 18, an entirely different offense. Although Section 1201 of Title 18 provides in a separate portion thereof to charge conspiracy, the grand jury did not return such a charge in connection with the kidnaping. Therefore, it was highly prejudicial error to charge the jury in respect to Count Two as to the law relating to conspiracy. The defendants were thereby placed on trial on a charge not made by the indictment in violation of due process of law guaranteed by the Fifth Amendment

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to the Constitution of the United States.

Cole v. Arkansas, 333 US 196, 92 L.ed. 644

It was as much a violation of due process of law to try the defendants on instructions on conspiracy not charged in the indictment in a different charge as it would be to convict him on a charge never made.

DeJonge v. Oregon, 299 US 353, 362, 81 L.ed. 278

In Cole v. Arkansas, supra, the court said:

"No principle of procedural due process is more clearly established than that notice of a specific charge and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal. Re Oliver, 333 US 257, 273, 92 L.ed. 682, 694."

Certainly the indictment did not charge them in Count Two but they were charged with conspiracy. It is certain that they were not tried or found guilty for conspiracy under Section 1201 of Title 18, U.S. Codes.

Furthermore, the attempted trial of the defendants under Title 18, Section 371, was in error since that section must have been implicitly repealed by Section 1201 of Title 18.

See: Krulewitch v. United States, 336 US 340-359, particularly the footnote at page 447, 93 L.ed. 796, in which the court points out that the general conspiracy

statute has been superseded by independent offenses on which it is overlaid.

Conspiracy to violate Section 1201 of Title 18 is one of those statutes. It is respectfully submitted that when a specific statute is passed covering a subject, the general statute is superseded.

The court devoted from page 4233 to page 4242, inclusive, in instructing on the law of conspiracy under Count Two when no such charge was contained in this count. We submit that this was of such a prejudicial character as to require reversal of the judgment below.

We are setting forth, in Appendix B hereof, the instructions complained of, which are quite lengthy.

The court also invaded the province of the jury in giving the instruction on kidnaping (R. 4244-4247), which is also set forth herein in Appendix C. This instruction invaded the province of the jury as the finder of the fact and set out only the government's side of the case on the crucial issues involved herein.

It was the defendants' theory of defense that this was not a true kidnaping; that there was consent by the alleged victim, Frank Sinatra, Jr. to the so-called kidnaping and that therefore it had either ceased to be a kidnaping or was not one in the first place, and that there was a desire on his part to become like his father to gain wide publicity. All of these matters were for the jury to weigh without the interference of the court and without



the court's giving only one side of the issue. It cannot be doubted, as this instruction is read, that the court gave a one-sided instruction invading the province of the jury and negating the defense of the defendant.

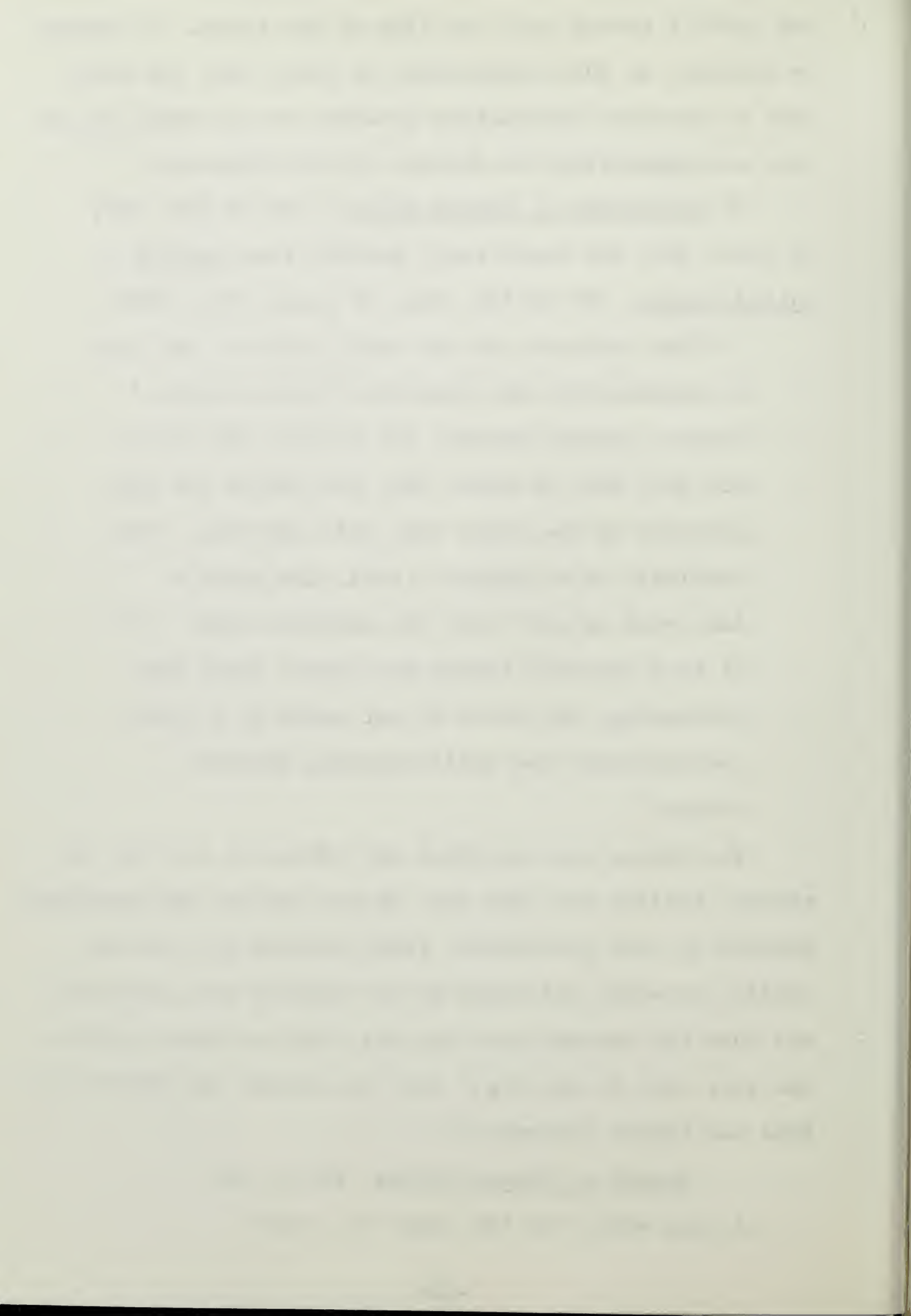
In Bollenbach v. United States, 326 US 607, 619, 90 L.ed. 350, the court said, quoting from Quercia v. United States, 289 US 466, 469, 77 L.ed. 1321, 1324:

"'The influence of the trial judge on the jury is necessarily and properly of great weight,' Starr v. United States, 153 US 614, 626, 38 L. ed. 841, 845, 14 S.Ct. 919, and jurors are ever watchful of the words that fall from him. Particularly in a criminal trial, the judge's last word is apt to be the decisive word. If it is a specific ruling on a vital issue and misleading, the error is not cured by a prior unexceptional and unilluminating abstract charge."

The charge was one-sided and erroneous and was, in effect, telling the jury that in his opinion the principal witness for the government, Frank Sinatra, Jr. had not really consented (although he had said he had consented) and that the consent was not real, and in effect telling the jury that it was their duty to convict the defendants. This was highly prejudicial.

Breese v. United States, 108 F. 804

It was error for the court to state:



"In answering some of the defense counsels' questions [Frank Sinatra, Jr.] stated in effect he consented to the acts and conduct of the defendants Keenan and Amsler of taking him from his room and transporting him. I point out to you that Frank Sinatra, Jr., also stated he co-operated and complied with the defendants' requests." (R. 4246)

It was for the jury, without interpretation by the court, to determine from all the circumstances in the case what Sinatra's testimony meant and to decide it from his language, his demeanor and all of the facts in the case. It was highly prejudicial for the court to invade that province by giving the jury an instruction to the effect that the jurors may not find the free will consent to have been impliedly given from an instruction that they were to consider that the defendants Keenan and Amsler threatened Frank Sinatra, Jr., at any time with a pistol in a menacing manner or made commands or threats therewith. Then they may infer from such menacing use that they could infer that Frank Sinatra, Jr., inferred and acted accordingly that the pistol was capable of doing bodily harm.

This instruction necessarily invaded the jury's right to determine that Sinatra, Jr., consented to the alleged kidnaping after leaving the hotel and to consider all of the facts, uninterrupted by comments from the court in connection with the transaction and which only gave the

government's side of the matter. The court has a duty in stating the evidence, or any matter regarding the evidence, to inform the jury that it is the trier of the fact and the jury must depend upon its own recollection and its own interpretation and its own inferences as to the evidence. Otherwise, the judge invades the province of the jury.

Wilson v. United States, 232 US 563, 58 L.ed.

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The court's instructions, in effect, told the jurors to disregard the testimony of the defendants, or not to give it the weight to which it was entitled, and thus invaded the province of the jury, to which exception was duly taken (R. 4279) and the court's statement of the facts did not give two sides of the matter. The objections of counsel for the defendants (R. 4279, et seq.) is set forth in full in Appendix D hereto.

At the beginning of the case, it was understood that objections by one counsel would go for all counsel.

The court rejected a series of instructions proposed by the defendants, all of which are set forth in Appendix E hereof.

Instructions Nos. 1 to 12, inclusive, were proposed under the defendants' theory of defense and were all rejected by the court, exception being duly noted and a request having been made for having them given. It was prejudicial error to decline to give these instructions.

Defendants' proposed instruction No. 13 set forth the theory of the defendants regarding the illegality of the statements secured after their arrest and in violation of their constitutional rights.

Defendants' proposed instruction No. 21, defining kidnaping, was a correct statement of the law and of the defense theory, and was rejected by the court.

It is appellant's contention that, by the instructions to the jury regarding the issue of consent, the judge virtually told the jury to convict the defendants and took away from the jury the fair opportunity to consider the defendants' defenses of the consent and possible collusion and cooperation of Sinatra, Jr. Whatever the judge thought of the defenses, it was not for him to decide, as the case had to be tried by the jury. It was for the jury to pass upon the defenses from all the direct circumstantial evidence as well as direct evidence and the admissions of the principal witness on cross-examination, the relationship of the parties and all of the events which occurred.

The judge's instructions virtually told the jury how to draw their inferences and conclusions and how to vote, and thus denied the defendants fair trial and due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

IV

THE COURT ERRED IN QUASHING THE SUBPOENA TO PRODUCE FRANK SINATRA, SR. (R. 2974) AND IN

REFUSING TO CALL HIM BACK FOR FURTHER EXAMINATION AND FURTHER CROSS-EXAMINATION.

A motion to produce Frank Sinatra, Sr., for the defense was made in order that there might be evidence that the money involved in the case was actually secured for the purpose of ransom and reward and not for publicity or some other reason.

Mr. Sheridan, the prosecutor, stated to the court that Sinatra, Sr., was not present in the continental limits of the United States but did not say that they could not actually produce him. However, he and Mr. Sinatra's counsel moved to quash the subpoena under Rule 17(b).

(R. 2976) The court required the defense to make an offer of proof. Defendants' counsel objected on the grounds that this was an invasion of their constitutional rights (R. 2976) and the court required him to make a showing.

The court had earlier made an order requiring Mr. Sinatra, Sr. to be present upon the serving of a subpoena with a Marshal. Mr. Sinatra did not show up and counsel stated that "We have some very definite things that we think are vital to the defense or I would not seek to have him here". (R. 2977) Counsel stated "Do I understand now that your Honor is withdrawing his previous order?" (R. 2977) The court said he was considering it.

Counsel argued that the presence of Frank Sinatra, Sr. was vital to determine the purpose for which the money was put up, whether actually for ransom or reward

or for the purpose of publicity or some other scheme or device to advance the interests of the Sinatras. The complete text of counsels' argument (R. 2979-2983) is set forth herein in Appendix F.

The court then granted the motion to suppress the subpoena and stated that to cause the Marshal to serve it upon Mr. Sinatra's residence in Palm Springs or to make any other search for him within the United States 'would be an oppressive and unreasonable use of the process of the court. Your motion, Mr. Rudin, is allowed'. (R. 2984).

It is respectfully submitted that the quashing of the subpoena to produce Sinatra, Sr., was a denial of the defendants' constitutional rights under the Sixth Amendment to the Constitution of the United States.

Pointer v. Texas, 13 L.ed.2d 923

Douglas v. Alabama, 13 L.ed. 2d 934

The court, in denying defendant's right to have Frank Sinatra, Sr. return on behalf of the defendant Clyde Joseph Amsler denied him the right of confrontation guaranteed by the Sixth Amendment to the Constitution of the United States and denied him the processes of the court as guaranteed by the Sixth Amendment.

Amsler had a constitutional right to have Sinatra, Sr. present, to confront him and to be subject to a vigorous cross-examination on the issue of whether the money he had secured was money for publicity or otherwise. He did not have to rely on the government's case or on the

cross-examination for his defense. He had a right to put on his defense independently and to have the witness present. It was an abuse of process and an abuse of the constitutional right of the defendant for the court to release Sinatra, Sr., and to quash the subpoena.

The court had granted the motion to have the Marshal subpoena Sinatra, Sr., and it was prejudicial error for the court to quash the subpoena duces tecum on the motion of Sinatra's attorney, Milton Rudin.

Sixth Amendment, United States Constitution

United States v. Seegar, 180 F.Supp. 467

Ridwell v. Aderholt, 13 F.Supp. 253

Taylor v. United States, 329 F.2d 384

United States v. Reid, 12 How (53 US 361, 13 L.ed. 1023)

Goldsby v. United States, 160 US 70, 40 L.ed. 343

Blackmer v. United States, 284 US 421, 76 L.ed. 375

United States v. Burr, Fed.Cas. 14,692

United States v. Kenneally, Fed.Cas. 15,522, 5 Biss. 122

Dupuis v. United States (CCA 9), 5 F.2d 231

Austin v. United States (CCA 9), 19 F.2d 127, cert. den. 275 US 523, 72 L.ed. 405

Refusal to attend is a contempt.

Ex parte Judson, Fed.Cas. 7561, 3 Blatchford 89

In re Ellerby, 13 F. 530

In Douglas v. Alabama, 13 L.ed.2d 934, at 937, the court said:

"We decided today that the confrontation clause of the Sixth Amendment is applicable to the States. Pointer v. Texas, 13 L.ed.2d 923. Our cases construing the clause hold that a primary interest secured by it is the right of cross-examination. An adequate opportunity for cross-examination may satisfy the clause even in the absence of physical confrontation. As the court said in Maddox v. United States, the primary object of the constitutional provision in question was to prevent depositions or ex parte affidavits being used against a prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief. (156 US 237, 242, 243, 39 L.ed. 409, 411. See also 5 Wigmore, Evidence, 1365, 1397; State v. Hester, 137 S.Ct. 145, 189, 134 S.E. 885, 900.)"

The Sixth Amendment to the Constitution of the

United States not only provides for the right of confrontation of witnesses against him, but also provides to have compulsory process for obtaining witnesses in his favor, without offers of proof or without having the court pass on whether he can have the witness or not, as was done in this case.

Rule 17, Federal Rules of Criminal Procedure, provides for the compulsory production of witnesses in compliance with the Sixth Amendment. Insofar as Rule 17(b) is concerned requiring the defendant to disclose his defense or make a showing allowing the judge to quash the subpoena, as was done in this case, we respectfully contend that it is a violation of the defendant's constitutional rights under the Fifth Amendment not to require him to incriminate himself in order to produce witnesses in his behalf.

Griffin v. California, 14 L.ed. 2d 106

All that the defendant needs to show is that he requires the witness for his defense.

It is respectfully submitted that the refusal to have Sinatra, Sr., present denied the defendant an essential element in this case, and that is to prove whether the money was put up for ransom or reward, as contended by the government, and to make available to the court and jury all of the facts and circumstances that might make a showing in this respect.

The denial of this right constituted a denial of

rights accorded the defendants under the Sixth Amendment to the Constitution of the United States.

V

DEFENDANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL.

During the course of the trial the court, through an order of the U.S. District Judges, excluded all the television people and cameramen from the second floor of the Federal Building, where the trial was being held. A motion was made to vacate this order (C.T. 59) on the ground that it would deprive the defendants of a public trial as guaranteed by the Constitution of the United States. The motion was denied and the court upheld the right to bar all photographers from the courtroom. The order, prohibiting all forms, means and manners of taking photographs or broadcasting or televising on or from specified portions of the Federal Building (including the entire second floor and hearing rooms and corridors), is set forth in the Appendix hereto (Appendix A, pages 13-17).

It is respectfully submitted that this order violates the Sixth Amendment to the Constitution of the United States guaranteeing to every accused a public trial. Newspaper photographers and television cameramen are just as much a part of the public and are just as much entitled to attend the judicial proceedings as any other segment of the public and it is is their right to record and tell the

public what is going on in the courtroom. It is for the protection of the public and in the best interests of the public that this is done.

The knowledge that all public acts are subject to public review is an effective restraint upon judicial power.

Matter of Oliver, 333 US 257, 267, 92 L.ed. 682

Publicity has always been deemed to play an important role by inducing the fear of exposure of testimony falsely given as well as in bringing notice of pursuing to the attention of possible witnesses who may not be aware of them.

See: Tankersley v. United States, 145 F.2d 58, 59

Justice must be administered openly.

Ray v. Ray, 195 Ore. 252, 25 P.2d 884

A lawsuit is public business, to be conducted openly.

Palestroni v. Jacobs, 77 A.2d 183, 10 NJ Supp. 266

In re Oliver, supra, condemns secret trials from all or any part of the public.

In this case, unlike other cases which have heretofore come before this court, a defendant has not objected to full publicity regarding the trial. The First Amendment to the Constitution of the United States guarantees the freedom of the press. It does not specify which form of press shall not be free, whether radio, television, photographic press or television press. It makes the use of public facilities free to all of the public.

The federal judges have no power to exclude this portion of the public any more than they have to exclude all women from the courtroom, or all persons who are in the military service or in uniform, or any other group of persons. The federal courts and the federal court buildings belong to the people. They were paid for by all of the people and not by the judges who preside over them.

We attached hereto, as Appendix G, an editorial as a part of our argument, which expresses a view which we urge upon the court.

We respectfully assert that the order which Judge East enforced deprived the defendant of a part of the public in the trial of his case and was a violation of the First and Sixth Amendments to the Constitution of the United States, the First Amendment guaranteeing the freedom of the press and the Sixth Amendment guaranteeing a public trial.

VI

THE COURT ERRED IN FAILING TO SUPPRESS THE EVIDENCE OF ALLEGED CONFESSIONS MADE BY THE ACCUSED. THE DEFENDANT JOHN WILLIAM IRWIN MADE AN ALLEGED CONFESSION PRIOR TO ARRAIGNMENT AND WITHOUT A SEARCH WARRANT OR WITHOUT THE BENEFIT OF COUNSEL AND WAS WITHOUT THE BENEFIT OF AN ATTORNEY AT THE TIME HE ALLEGEDLY IMPLICATED JOSEPH CLYDE AMSLER. NONE OF THE DEFENDANTS HAD COUNSEL AT THE TIME STATEMENTS WERE TAKEN FROM THEM AND NONE HAD BEEN ARRAIGNED BEFORE STATEMENTS

WERE TAKEN IN THE ABSENCE OF COUNSEL REPRESENTING THEM AND IN THE ABSENCE OF THE FULL ADVICE AND BENEFIT OF COUNSEL. THEREFORE, THE USE OF THESE ALLEGED CONFESSIONS VIOLATED DUE PROCESS OF LAW GUARANTEED BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

We start with the confession of John William Irwin. Irwin, a painter and a friend of Barry Keenan's mother (formerly Mrs. Keenan and at the time of trial, Mrs. Schaeffer), went to his brother's home in San Diego. (R. 3601) He told his brother that he was involved in the Frank Sinatra, Jr. kidnaping and his brother made a telephone call to the FBI. (R. 3601) He talked and said he had been involved in the removal of Frank Sinatra, Jr. and he wanted to give himself up. They ultimately came to his brother's place and he was waiting outside. (R. 3602)

On December 16, 1963 he was taken into custody at his brother's home at 1124 Florida Street, Imperial Beach (San Diego County), California, and was questioned by the officers on their arrival. Irwin stated that he had \$50,000 of ransom money in two suitcases in his automobile and he voluntarily turned the keys to his automobile over to FBI agent Thomas B. Mitchell, who was accompanied by agent Robert G. Moore. They went to the car, opened the attache case and observed that this contained money.

Irwin's brother had suggested that they contact an

attorney and tried, but they were unable to reach any attorney and Irwin then was taken to the FBI offices in San Diego at approximately 9:25 a.m. on December 13. He also turned over to special agent Robert G. Moore a ring with the initials 'F.S.' on it. He then made a lengthy statement to the FBI agents outside of the presence of any attorney and prior to any arraignment.

On arrival at the FBI offices Irwin asked if he could speak to Frank Sinatra, Jr. (R. 3604) and they said no. There were three persons in the room: Mr. Fields, Mr. Armstrong and Mr. Jones. He does not recall anything being said to him about an attorney. There was a recording machine there at the time and they began asking him questions and recorded his statements and conversations. (R. 3605, et seq.) There was also a stenographer who started to take things down. (R. 3609) He did not dictate the part of the statement that he had been advised that anything he said could be used against him. (R. 3611) The statement that was dictated was by agent Fields.

Five tapes of recordings were taken from Irwin outside of the presence of Amsler and outside of the presence of any attorney and were later introduced in evidence in the trial of this case. This violated the rule of Massiah v. United States, 377 US 201, 12 L.ed.2d 356.

At 12:05 a.m. December 14, 1963, Joseph C. Amsler was located by Assistant FBI Director Joseph J. Casper, Curtis E. Lynum and William G. Simon and Supervisor Robert

E. Gebhardt, at 3825 3/4 Dunn Drive, Culver City, in an apartment occupied by Roger Dier. He was taken to the FBI headquarters and questioned prior to any arraignment. The agents stated that he was advised of his right to counsel, but at that hour of the morning no counsel was available and he was questioned at considerable length prior to arraignment in violation of the McNabb rule and in violation of his constitutional rights. Amsler denied that the confession and the interviews were free and voluntary. (R. 3115, et seq.)

The use of his statement and confession, therefore, were in violation of the Fifth Amendment to the Constitution of the United States and the following cases:

McNabb v. United States, 318 US 332, 87 L.ed. 819

Gross v. United States (9th Cir.), 136 F.2d 878

Anderson v. United States, 318 US 350, 87 L.ed.

829

United States v. Mitchell, 322 US 65, 88 L.ed.

1140

Massiah v. United States, 377 US 201, 12 L.ed.2d

356

Escobedo v. Illinois, 378 US 478, 12 L.ed.2d 977

Rule 5, Federal Rules of Criminal Procedure

The statements of Keenan were also introduced in evidence against appellant. Starting at 1:35 a.m. on December 14, 1963, he was interviewed at the Los Angeles office of the FBI. He was not arraigned until about 4 o'clock

that morning.

At 3:40 a.m. he was transported from the Los Angeles office of the FBI to the office of Commissioner Theodore Hocke in Los Angeles for arraignment, but the statements that were taken prior to arraignment and outside of the presence of any attorney were introduced in evidence and used as against the defendant Amsler. This violated the rule of Massiah v. United States, 377 US 201, 12 L.ed.2d 356.

Keenan was first advised that his father had employed a Mr. Rex Ellis as his attorney and Ellis had contacted him on December 14 at the county jail and he expected a visit from Mr. Ellis.

Keenan's statement, made in the absence of counsel and in the absence of defendant or defendant's counsel, was thereafter presented in the trial. This likewise violated the rule laid down in Massiah v. United States, supra.

The use of the alleged confessions, therefore, violated due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

VII

THE FEDERAL COURT WAS WITHOUT JURISDICTION

TO TRY THE DEFENDANT JOSEPH CLYDE AMSLER.

THERE WAS NO EVIDENCE OF INTERSTATE TRANSPOR-

TATION BY AMSLER PRIOR TO THE CONSENT OF FRANK

SINATRA, JR. TO THE TRANSPORTATION. THERE WAS,

IN EFFECT, THEREFORE, NO KIDNAPING AS THAT

OFFENSE IS DEFINED. CONSENT VITIATES ANY
ALLEGED KIDNAPING.

The evidence in this case as to the purported alleged transaction nullifies any kidnaping in interstate commerce. If we assume that young Sinatra had no knowledge of the fact that he was to be taken and removed on December 8 from Harrah's Lodge, in California, nevertheless, before he left California he had consented to the trip.

Many interesting things are revealed by the testimony in this case, and the case offers some unexplained mysteries which still have not been resolved, namely, how Frank Sinatra, Jr.'s room mate, within a short time after he left the hotel, knew he had been "kidnaped" and notified the police and authorities to that effect.

Thereafter, Sinatra's own attitude of consent to the trip and the failure to make any outcry or to notify any of the officers regarding his identity or his whereabouts or his trip is suspect.

We submit that consent vitiates any kidnaping. A man may pick up a young lady against her will and consent and start taking her for a ride for possible sexual purposes and she thereafter consents to all of these things. The element of kidnaping certainly has disappeared.

So, here, there was, in effect, no kidnaping as that offense is defined. (Sorrells v. U.S., 57 F.2d 973)

VIII

THE COURT COMMITTED PREJUDICIAL ERROR IN

REFUSING TO GIVE THE DEFENDANTS THE NAMES AND ADDRESSES OF ALL OF THE PROSPECTIVE JURORS IN VIOLATION OF THE MANDATORY STATUTE TO SUPPLY THESE NAMES AND ADDRESSES THREE DAYS PRIOR TO TRIAL IN CAPITAL CASES. THE REQUEST WAS MADE AND REFUSED. THE COURT ALSO ERRED IN REFUSING TO SUPPLY THE DEFENDANTS WITH THE NAMES AND ADDRESSES OF ALL THE PROSPECTIVE WITNESSES INTENDED TO BE CALLED, THREE DAYS PRIOR TO TRIAL, AS REQUIRED BY THE MANDATORY STATUTE IN CAPITAL CASES, TO-WIT: TITLE 18, SECTION 3432, U.S. CODES.

The court erred in refusing the defendants the names and addresses of the prospective jurors and prospective witnesses at least three days before trial.

Congress has made it mandatory for the prosecution to furnish the defense with the names and addresses of all prospective jurors and all prospective witnesses in capital cases. Title 18, Section 1201, U.S. Codes, the kidnaping statute, is a capital statute. It is not what the government asks in the trial of the case, but what the statute itself provides as possible punishment which determines the type of crime.

Title 18, Section 3432, U.S. Codes, requires the prosecution to furnish to the defendant the names and addresses of all prospective jurors and all prospective witnesses prior to trial.

See: Smith v. United States, 360 US 1, at 8-9,

3 L.ed.2d 1041, 1047-1048

The failure to comply with this mandatory statutory rule requires a reversal of the judgment below.

IX

THE EVIDENCE IS INSUFFICIENT TO SUPPORT THE VERDICTS. THE VERDICTS ARE CONTRARY TO THE LAW AND THE EVIDENCE. THE EVIDENCE SHOWS BOTH IMPLIED AND EXPRESS CONSENT BY SINATRA, JR. TO THE TRANSACTION. THE ACTS, AS DESCRIBED BY THE PRINCIPAL WITNESS OF THE GOVERNMENT, FAILED TO SHOW ANY TRUE KIDNAPING.

The court should have granted judgments of acquittal to appellant Amsler.

The whole transaction, looked at objectively, was supposed to be an alleged kidnaping of Frank Sinatra, Jr. for ransom from Harrah's Lodge, at Stateline, California, through Nevada and back to California, in a Boston-like blizzard. At the time of the crime Frank Sinatra, Jr. had been away from his father since he was 14 years old (he was 20 at the time of the occurrence, earning only \$100 a week and was down at the bottom of the marquee). Therefore, the actions of Frank Sinatra, Jr. appear to be suspect of chicanery from start to finish.

As appellant and Keenan, not an appellant, entered the room of Sinatra where he and John Foss had been drinking beer and chatting, they apparently took \$20 away in the

course of a possible alleged robbery. They left Foss there. Foss, who was one of the musicians connected with Sinatra's performance at Lake Tahoe, quickly reported that Sinatra had been kidnaped. Sinatra, Jr. did not raise any question as to why the men were taking him and where they were taking him and what was the object of it.

When they reached the police blockade after driving some 30 miles down Highway 50 at the junction of Highway 395, they observed that there were some red lights and they stopped. At that time a Nevada policeman came up to the vehicle and inquired why it had stopped. Frank Sinatra, Jr. was sitting in the back seat of the car. Amsler took off, went down into the snow and hid out and Mr. Keenan, in order to avoid and erase suspicion, climbed out of the car, got underneath the back of the car and was adjusting the chains on his automobile. Frank Sinatra, Jr. was sitting there all alone in the back seat watching all of this performance. He did not sound any alarm. Nothing was said. He did not make any outcry. He did not tell the police that he had been kidnaped or that he was Frank Sinatra, Jr. As a matter of fact, before they got to the roadblock he made a point of removing his ring and giving it to one of the defendants. He said this could cause him to be identified and he did not wish to be identified.

After they started to drive through the roadblock,

another officer appeared and charged at the car with a shotgun and said "Stop, kid, or I'll blow you out of that seat", or words to that effect. As a result, the windows came down and the shotgun was put into the car at Mr. Keenan's head. Frank Sinatra, Jr. sat in the back seat, gave no alarm and did not tell the officer that he was Frank Sinatra, Jr. and that he was being taken for a ride. He did not do this because he was giving his express consent at that point to all of this transaction. He later makes the statement that, in effect, these officers "bug" him.

The car door was not locked. Frank Sinatra, Jr. did not say to any of the officers "I'm the fellow that you're looking for". He never cried out at any time. Three times he testified he had consented to the whole thing.

The officers at the roadblock were armed with army carbines, shotguns, magnums, revolvers, and sub-machine guns. There were four cars there. The officers at the roadblock were Lt. Newton, Officer Dunn, Officer McGinn, Officer Simon, Officer Wendall, Officer Jones and Officer Canatse. (R. 4122) This roadblock was heavily armed and the officers all had flashlights and flares. Yet Sinatra, Jr. made no effort to make himself known or to tell the officers to arrest the men.

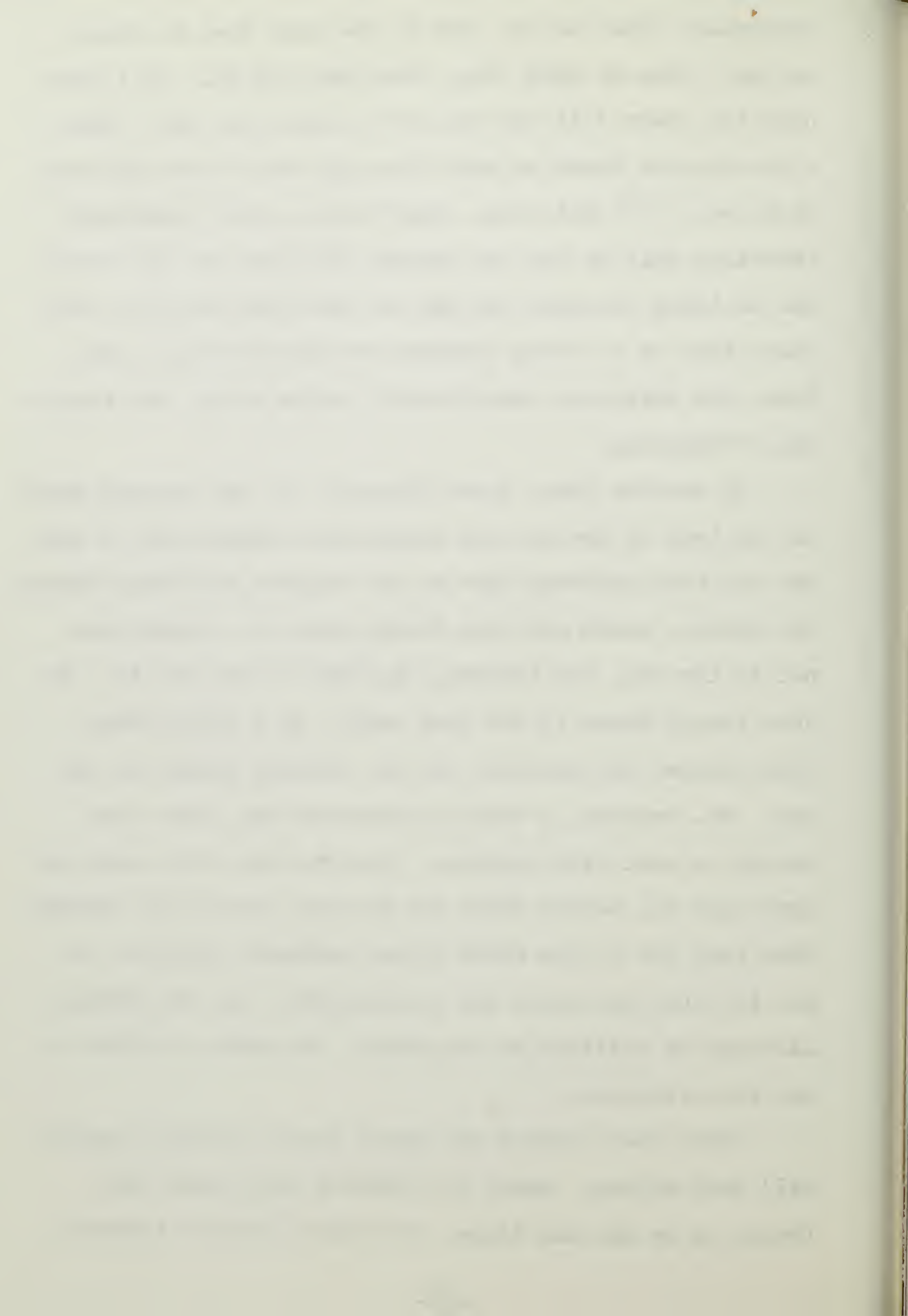
Sinatra, Jr. was enjoying it. It was exciting to him. He was consenting and going along with it.

After they left the roadblock Sinatra, Jr. said, in

substance, "That s.o.b. Who in the hell does he think he is." Then he said "Cops like that bug me. If I ever have the power I'll see that he's taken care of." Then a few minutes later he said "You guys don't have to worry about me. I'll help you. Don't worry about roadblocks." Certainly this is not the picture of a man who is afraid, who is being kidnaped and who at that time does not even state that he is being kidnaped but his roommate, John Foss, who strangely enough wasn't taken along, was reporting a kidnaping.

At another time, Frank Sinatra, Jr. was sitting alone in the back of the car and could have slipped out of that car and been half-way back to Los Angeles and Barry Keenan, the driver, would not have known about it. Amsler was not in the car, but Sinatra, Jr. didn't even try it. He just stayed there in the back seat. At a later point they stopped for gasoline and Mr. Murphey worked on the car. Mr. Dondero, a State maintenance man, was close enough to chat with Murphey. Sinatra knew that there was more than one person there but he does absolutely nothing. When they got to the Mason Street address, Sinatra, Jr. saw the room and there was a telephone. He did nothing, although he realized he was alone. He made no effort to use the telephone.

After they reached the Mason Street address, Amsler fell dead asleep. Again Mr. Sinatra could have left there, as he was all alone. At other times he (Sinatra,



Jr.) entertained the appellant here with stories and songs. The total amount which Amsler received in connection with the whole matter was \$100. (R. 3460)

There is a failure to prove any intent on the part of Amsler to kidnap anyone. Amsler stated that Keenan told him a story about a plan he had that was foolproof and that he had a prescribed plan and a prescribed script. As a matter of fact, he said he had made a dry run of the thing. He said that Mr. Sinatra had consented and that if anything arose over it and they were arrested that bail would be furnished them and also, possibly, an attorney. A bail bondsman did appear at the jail shortly after Amsler was placed in custody and offered to bail him out if he would plead guilty and "admit" the kidnaping and tell the story. Amsler promptly refused the offer and called for the FBI. This certainly was not the actions of a kidnaper.

The whole transaction is suspect. Certainly it does not measure up to the statutory definition of "knowingly transporting in interstate commerce a person who has been unlawfully seized" or kidnaped and held for ransom or reward or otherwise. At the time of the transportation there was no discussion of his being seized unlawfully or kidnaped or carried away for ransom or reward or otherwise and this did not develop until later, if at all.

Certainly, whatever transactions took place after the trip started and while they were still in California were

consented to and thus negatived any kidnaping, carrying away or abduction for ransom or reward.

Frank Sinatra, Jr. avoided meeting the newspaper men and hid in the trunk of an automobile of one of the security officers in the neighborhood until he reached the house of his mother and had a chance to confer with the lawyers. When he saw his father he said "I'm sorry, Dad". This is a strange and unusual remark for a person who supposedly was kidnaped. Was he like a boy who had just been through a big episode, that he had arranged, coming home at 4 o'clock in the morning? What was his story about? If he actually had been kidnaped he had no reason to be sorry, he had only to give an explanation of what happened. The defense opened it up and left it there for the prosecution to explore, but there was no exploration of the matter by the government.

X

ALTHOUGH THE INDICTMENT CHARGED SIX COUNTS IN WHICH THE ACCUSED WAS IMPLICATED, THEY WERE ALL ONE ALLEGED TRANSACTION AND THE SPLITTING UP OF THE COUNTS WAS, IN EFFECT, AN EFFORT TO CHARGE THE DEFENDANT WITH SEVERAL OFFENSES AND VIOLATED DUE PROCESS OF LAW GUARANTEED BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. ONLY ONE OFFENSE WAS CHARGED.

Although the government has charged six counts, the six counts were and are duplicitous and prejudicial to

the defendant.

Actually, kidnaping encompasses all of the acts charged in all of the other counts. Therefore, the government has actually built up the case into a series of separate acts where actually only one act occurred, to-wit: the alleged kidnaping which involved all of the elements charged in the other acts.

See: Kotteakos v. United States, 328 US 750, 90 L. ed. 1557

Therefore, appellant's rights to due process under the Fifth Amendment to the Constitution of the United States were violated.

XI

THE COURT ERRED IN OVERRULING THE MOTIONS TO DISMISS ON THE GROUNDS OF DUPLICITY. THE CHARGE OF KIDNAPING UNDER SECTION 1201 CONTAINS THE CHARGE OF CONSPIRACY AND THERE WAS A DUPLICATION CHARGING CONSPIRACY UNDER THE CONSPIRACY STATUTE, THUS DOUBLING THE PUNISHMENT OF THE DEFENDANT.

Count One of the indictment, the conspiracy count, necessarily merged in Count Two of the indictment and the other counts for the reason that all of the acts charged as a conspiracy were also the acts charged as the substantive crime.

Therefore, although conspiracy is a separate crime, when each and all of the acts are the same in the

conspiracy as in the substantive crime, there is a merger and they both cannot be tried and the defendant was thereby highly prejudiced.

Kotteakos v. United States, 328 US 750, 90 L.
ed. 1557

XII

THE COURT ERRED IN REFUSING DEFENSE REQUESTS
TO SUBPOENA JOHN HANSON, AN IMPORTANT WITNESS
FOR THE DEFENDANT AMSLER, THUS VIOLATING
SIXTH AMENDMENT RIGHT TO PROCESS.

The court committed prejudicial error in refusing Amsler a subpoena to call John Hanson as a witness in support of his innocent intent and in rebuttal of government contentions. The refusal to call this important witness was highly prejudicial to the defendant Amsler.

John Hanson had worked with the defendant Amsler prior to this case. They had had conversations with reference to the matter. Mr. Amsler told the jury that Mr. Hanson did not participate in the scheme; that he and Hanson were up at Santa Barbara and he had told Hanson regarding what Keenan had related (R. 3460), that Keenan had stated he had a perfect scheme worked out and the reason it was perfect was that Frank Sinatra, Jr. was to know about it. (R. 3461) There was also present during this conversation a Johnny Long. The conversation took place between November 22 and November 30, 1963.

Amsler testified that he honestly believed that Barry

Keenan had a scheme all worked out 'when Frank was so cooperative in the room, and then when he told us how to get through the roadblocks and gave us his ring and told us that -- to keep it so they wouldn't recognize him'.

(R. 3462) The United States Attorney tried to bring out that Amsler had used the words "rich fag" (R. 3484), that they had run into a rich fag in the bar and that he had a plan for the kidnaping. He denied ever making such statements and he denied he ever told Hanson that he went to this person's home up in the canyon.

Thereupon, counsel sought to have Hanson produced as a witness for the defense and petitioned the court for an order to bring Hanson in to testify on this matter. (R. 3486) The court denied the motion. (3487)

It is respectfully submitted that this was prejudicial error. Hanson was a very important witness to prove any statement that he had made that the defense was attempting to convey to the jury that there was to be a foolproof kidnaping. (R. 3488) He was a necessary and essential witness in the matter.

XIII

THE COURT ERRED IN THE ADMISSION AND EXCLUSION OF EVIDENCE.

Ronald Bray was asked the following question:

"Q.Are you hoping by this testimony that you are giving favorable to the prosecution, if it is, that you will not be prosecuted as

a co-conspirator?

"THE COURT: Don't answer that.

"MR. SHERIDAN: Objection as to the way the question is framed, your Honor.

"THE COURT: It is sustained." (R. 2043)

The only answer the witness was permitted to give was "I hope I am not linked with this". (R. 2043)

Again, on cross-examination the court erred in refusing to allow Bray to answer this question:

"Q. Isn't it a fact that he (Keenan) told you that you would not be prosecuted because Mr. Frank Sinatra, Jr. was cooperating?

"MR. SHERIDAN: Asked and answered as to the last part, your Honor.

"THE COURT: He answered in the negative, Mr. Forde." (R. 2117-2118)

It was an important question in support of the defendant's position that Keenan had told people that they would not be prosecuted if they participated because Frank Sinatra, Jr. was cooperating.

XIV

THE COURT ERRED IN DENYING COUNSEL FOR APPELLANT AMSLER THE RIGHT TO TAPE THE PROCEEDINGS, PARTICULARLY THE ARGUMENT OF THE PROSECUTOR.

It was a violation of defendant's right not only to a public trial, but to have all of the proceedings recorded himself. (R. 4036) Counsel for appellant Amsler brought

to court his portable Uher tape recorder, which he sat on the floor. Counsel asked the court for permission to use the tape recorder to tape the argument of the prosecutor, as the court reporter would be unable to transcribe the argument during the day and possibly not for some days and he wanted to get the prosecutor's argument and refer to it during the noon hour, and he intended to tape that argument and his own. (R. 4037) The court said he had no objections to doing it (R. 4038), then later on the court withdrew the privilege and denied the right of counsel to continue taping the prosecutor's argument and to use the tape recorded during the argument of the prosecutor or himself. (R. 4097)

The court's ground for recalling his permission was that counsel's tape might be used in some way to put on a wedge to find devices to impeach the official record of the court. (R. 4098) The court further stated, for the record, that it would be a contempt if a recording made by counsel would in anywise ever be attempted by any person to be used to impeach in some way or contradict or somehow impugn the official record. (R. 4098)

Counsel for an accused has a right to take notes by pen, pencil, shorthand and by a silent recording device that in no way disturbs the court or seeks in any way to interfere with the court proceedings as was the case here. It was an interference with defendant's right to take the exact words of the prosecutor and be able to answer them

exactly. The official court reporter could not get it out in time, nor was counsel required to buy the transcript or pay for it.

This was a public trial and public trial requires the right to see and hear and record what is seen and done, a denial of which is a denial of public trial guaranteed by the Fifth and Sixth Amendments to the Constitution of the United States.

XV

THE PROSECUTOR WAS GUILTY OF PREJUDICIAL MISCONDUCT IN PRESENTING OTHER EVIDENCE REGARDING ALLEGED KIDNAPING THAT WAS HIGHLY IMPROPER.

THE COURT ERRED IN NOT GRANTING A MISTRIAL AS A RESULT OF THIS IMPROPER EVIDENCE THAT WAS FOREIGN TO THE CASE, IN OTHER WORDS, IN REFERENCE TO AN ALLEGED KIDNAPING REGARDING BOB HOPE'S SON, NOT CHARGED IN THE INDICTMENT.

During the introduction of evidence by Mr. Sheridan, he asked the FBI agent whether anything further was said and brought out a purported conversation between the defendant and the FBI agent as follows:

"MR. LAVINE: If your Honor please, yesterday during the examination by Mr. Sheridan, on page 2677 of the transcript, if your Honor has another copy there --

"THE COURT: I don't have, but I will hear you.

"MR. LAVINE: Mr. Sheridan asked the witness, the FBI agent, as to whether Mr. Amsler -- whether anything was said further, page 2677, in the interview, and the witness said, 'Yes, sir.' Then he said:

"Q What did he say in that regard?

"A He said he started thinking along his own experiences as to who might have enough money to be a victim of a kidnaping, and he first thought of a former schoolmate of his.

"Q Did he name him?

"A Yes, sir, he did.

"Q Who was it?

"A He named Tony Hope.

"Q Did he say who Tony Hope's father was?

" Yes. Tony Hope's father is Bob Hope.

"Q Did he say why, did he discuss as to whether or not he abandoned the idea of kidnaping Tony Hope?

"A Yes, sir. He said he abandoned the idea -- he had known Tony Hope from grammar school days, they had gone to school together, and he did abandon the idea.

"Q Did he say why?

"A Yes, sir. He said that Mr. Hope was so highly regarded, and -- he said this thought of Tony Hope was only fleeting, it was of short duration. He made no effort or plans looking towards Hope.

"Q It never got beyond the idea stage, then?

"A That's right, sir.

"Q Did he mention any other victim, potential victim, other than Tony Hope?

"A He advised -- after discussing Hope, he immediately thought of Frank Sinatra, Jr.'

"No, if your Honor pleases, we submit that this testimony regarding another alleged offense not charged in any indictment or information and highly prejudicial to my client and to the other defendants, and I am authorized to speak for Mrs. Root and I believe I am authorized to speak also for the other counsel, all counsel in the case.

"And following this very short narrative of this matter the publication in the newspapers played this in great headlines which the jury could not help but see.

"At this time I move for a mistrial on the grounds of improper evidence which has polluted

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the stream, so to speak, of this case of justice and prevents a fair trial.

"THE COURT: Are you complaining of news media of this trial?

"MR. LAVINE: I am complaining first of the improper matter in connection with the introduction in evidence in the case of matters that were foreign to this case and should have been excluded by the prosecutor in his questioning. That is my first objection.

"THE COURT: Yes.

"MR. LAVINE: And then the second one follows that the news media picked it up and caused further prejudice in this matter. I legally complain, first of all, of the improper introduction in evidence of this particular --

"THE COURT: Well, then I take it from your remarks, Mr. Lavine, you do complain about the news coverage that --

"MR. LAVINE: I complain about both, your Honor. I complain first, that the -- that it was caused by an improper presentation in evidence of matters that are foreign to this case." (R. 2768-2771)

The court denied the motion. (R. 2776)

"MR. LAVINE: One other motion, your Honor. We wish to offer in evidence the newspaper of

last night, the evening Herald, which had the headline 'BOB HOPE'S SON 'NEAR VICTIM'' 'KID-NAP CONFESSION' 'Sinatra Was Means to Wealth. Bob Hope's Son 'Near Victim.'" And we offer this as defendants' next in evidence for the purposes of furthering this motion and as an exhibit to our motion for mistrial.

(The exhibit was received and marked for identification)

"MR. LAVINE: So that the record may be clear, I understand your Honor denied the motion for mistrial.

"THE COURT: Well, if there is any doubt about it, let the record show that I have denied that motion." (R. 2776-2777)

XVI

THE COURT COMMITTED PREJUDICIAL ERROR IN ENTERING THE JURY ROOM AND DISCUSSING MATTERS WITH THE JURY IN THE ABSENCE OF THE DEFENDANTS AND THEIR COUNSEL AND THEN DENYING THE MOTION FOR A MISTRIAL. (R. 4025) THE PROCEDURE VIOLATED DUE PROCESS OF LAW GUARANTEED BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND ALSO DENIED THE RIGHT OF THE DEFENDANT TO A PUBLIC TRIAL IN ALL ITS PROCEEDINGS.

It appeared that at the close of the case, on the

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afternoon of March 5, 1964, that Judge East had entered the jury room and talked to jurors about some newspaper article or some newspaper publicity which had appeared in connection with the case. His exact conversation does not appear in the record but he stated that he had it transcribed and sealed as an exhibit. (R. 4030)

The following proceedings took place:

"MRS. ROOT: If your Honor pleases, Mr. Lavine was prepared to argue the law on the matter, but he isn't here, so if I might fill in. I could never fill in and do what he could do, I'm sure.

"If your Honor pleases, your Honor made a statement last night to us, and the reporter reported it, of course, as a part of this record, that you had questioned the jury out of the hearing of the defendants and out of the hearing of counsel for the defendants as well as the prosecution. It was my feeling at the time that you made this announcement that at that time we should have registered our objection.

"However, I believe that a further research into the law, I do not believe that that was necessary because today is the first day that we really have the opportunity to do so.

"I personally feel, and I move this court,

that defendant Mr. Irwin and the defendant Mr. Amsler -- I see Mr. Forde is here -- move for a mistrial in that there apparently was evidence presented or obtained that should affect, might affect, possibly could affect the rights of the defendants.

'We feel that, if your Honor pleases, your talking with the jury -- and we say this most respectfully, if your Honor pleases, that it is in violation of the constitutional rights of the defendants, that they should have at least their counsel present if they not be there, and it is my feeling that they even should have had it presented -- should have had the matter recorded as far as what the jurors had to say and your Honor had to say in the presence of the defendants and counsel.

"THE COURT: I understand your motion, and there isn't any need for you to take any time to argue the legal matter about it, because I am satisfied of my course.

'Now, do you have anything further to say for the record, Mr. Lavine?

"(Mr. Lavine entered the courtroom.)

'MR. LAVINE: Yes, your Honor.

"We do not have a record of what happened, and we would like your Honor to make a record

for the purpose of our record.

"THE COURT: You will have a record of it at the end of the trial.

"MR. LAVINE: As to what occurred in the --

"THE COURT: Yes.

"MR. LAVINE -- in connection with the communication to the jury.

"THE COURT: You heard my remarks to the court reporter yesterday?

"MR. LAVINE: Yes. That is what awakened me last night, your Honor. And I want to join in Mrs. Root's motion, and I have requested this early conference so that we could have a complete record of any conference had by the court and jury outside the presence of the defendants in violation of their constitutional rights under the Fifth Amendment -- Fifth and Sixth Amendments to the Constitution, and that is the due process clause and the right of confrontation in case Mr. Sheridan wants to know what they referred to.

"THE COURT: Well, I can quite understand that if the court went to the jury and gave them some instructions or discussed any phase of the case with them, that is, the evidentiary phase of the case with them, that would be highly improper. But what I did yesterday in

connection with my conference with the jury as a whole and each one of them separately was nothing more than what the Supreme Court has directed the United States District Courts to do.

"In the event that there is some out-of-court publication which the defendant claims tends to deny him of the right of free trial and due process, that the court makes it own investigation by talking to the jury and making a record of that fact and of the substance of the conversation, and then entering his ruling. That I have done, and it is by direct command of the United States Supreme Court.

"It may well be that the majority will change, but I can't wait until that happens.

"MR. LAVINE: Our objection, your Honor, is only that it was not in the presence of the defendants or counsel or with their consent or knowledge, and --

"THE COURT: All I can say is tell you, Mr. Lavine, in that regard, is that you will have to ask the Supreme Court of the United States to change the directions to the District Court. I did nothing more than Judge Ryan did -- I beg your pardon -- Judge Curtis did in the Ryan case. He did one thing further,

he gave counsel a transcript of the examination, which I shall not do --

'MR. LAVINE: I see.

"THE COURT: -- until after the trial.

'MR. LAVINE: Your Honor made the statement early in the case that the only time the judge gets into trouble is when he doesn't hold matters in open court. With this we agree. We regret that this didn't occur in open court, and assign that as an error which we urge as an unconstitutional omission.

"Thank you, your Honor." (R. 4025-4029)

It is respectfully submitted that no judge may enter the jury room and talk privately to the jury; that to do so is a denial of public trial guaranteed by the Sixth Amendment to the Constitution of the United States. Denial of a public trial entitled a defendant to a reversal of the judgment.

Tankersley v. United States, 145 F.2d 58

It is error for the court to communicate with the jury in the absence of counsel and without notice to them.

Ah Fook Chong v. United States, 91 F.2d 805

It is error for the court to give any instructions or to discuss any matter with the jury except in the presence of the defendant and his counsel.

Lewis v. United States, 146 US 370

XVII

THERE WERE ILLEGAL SEARCHES AND SEIZURES UNDER THE FOURTH AND FIFTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

The search of Irwin's house, the taking of the bags of money without a search warrant and without a warrant of arrest, the search of the house for the taking of other moneys, were all illegal and were illegally used as against appellant Amsler, in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

Mapp v. Ohio, 367 US 643, 6 L.ed.2d 1081

XVIII

THE COURT ERRED IN DENYING THE MOTIONS FOR JUDGMENTS OF ACQUITTAL.

Sinatra's admitted consent vitiated any kidnaping or obtaining the money for ransom or reward.

Appellant was therefore entitled to judgments of acquittal and the court erred in denying the same.

Rule 29, Federal Rules of Criminal Procedure

Barr v. Columbia, 12 L.ed.2d 766

Bouie v. Columbia, 12 L.ed.2d 894

Robinson v. Florida, 12 L.ed.2d 771

XIX

THE DEFENDANTS WERE TRIED UNDER AN ATMOSPHERE OF GREAT PREJUDICE AND WERE DENIED FAIR TRIAL.

THE COURT ERRED IN FAILING TO GRANT A NEW

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5.

TRIAL DUE TO AN INTERVIEW GIVEN DURING THE
TRIAL BY FRANK SINATRA, JR., WHICH WAS PUB-
LISHED IN THE LOS ANGELES TIMES ON THE
MORNING OF FEBRUARY 29, 1964. (R. 2972)

On the morning of February 29, 1964, the Los Angeles Times' headline ran "SINATRA JR. DISTURBED OVER PUBLIC'S ATTITUDE" and then it commented on "People Doubt Me" and an extensive article about the matter. (R. 2973-2974)

The giving of an interview by the principal witness in the trial, during the trial, which made headlines which would necessarily be picked up by other news media, was highly prejudicial to the defense and the motion for the new trial should have been granted.

Hoffa v. United States (6th Cir.), 235 F.Supp.
611, 349 F.2d 20

In the Hoffa case, the trial judge moved the trial from one District in Tennessee to another because of the publicity.

The motion for mistrial was made by counsel on behalf of Mr. Keenan, but early in the trial it was agreed that an objection by one counsel would be applicable to all and since Amsler was charged with being a principal and participant, along with Mr. Keenan, the article was equally highly prejudicial to Mr. Amsler and a motion for mistrial (R. 2963) should have been granted. It was, of course, denied.

THE COURT ERRED 'IN DENYING A SEVERANCE OF THE TRIAL OF AMSLER FROM THAT OF THE OTHER DEFENDANTS, TO THE GREAT PREJUDICE OF DEFENDANT AMSLER.

The court erred in denying a severance and separate trials for each of the defendants. This was of great prejudice, particularly to Amsler, in the light of the confessions and the activities of the other defendants.

The court should grant a severance where confessions of the defendants, made separately and in the absence of counsel, would prejudice each of the defendants.

See: People v. Aranda, 407 P.2d 265, 47 Cal.Rptr.

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In the Aranda case, the court reversed a case where there were co-defendants and incriminatory statements were elicited from the co-defendants which were later used in evidence. The court in the Aranda case points out it is a fiction and a naive assumption that juries can disregard confessions or statements made by one defendant which incriminate another, and it is respectfully submitted that it was highly prejudicial in this case in view of five tape recordings secured from Irwin and used against appellant Amsler.

THE COURT ERRED IN FAILING TO PERMIT CROSS-EXAMINATION AND CONFRONTATION OF THE MONEY

AND IN FAILING TO SUPPRESS THE EVIDENCE REGARD-
ING THE SO-CALLED RANSOM MONEY, THE DEFENSE
NEVER HAVING HAD ANY OPPORTUNITY TO SEE OR
EXAMINE THE SO-CALLED RANSOM MONEY, WHETHER
THERE WAS ANY MONEY PURPORTEDLY FOR RANSOM.
USE OF SUCH EVIDENCE VIOLATED THE DEFENDANT'S
RIGHTS TO DUE PROCESS GUARANTEED BY THE
FIFTH AMENDMENT TO THE CONSTITUTION OF THE
UNITED STATES.

The so-called ransom money for the most part was
not produced in court, but had been destroyed. Since
there was never any opportunity for the defense to see or
examine the so-called ransom money, its use as evidence
violated defendant's rights to due process of law guar-
anteed by the Fifth Amendment to the Constitution of the
United States.

Pointer v. Texas, 13 L.ed.2d 923

Douglas v. Alabama, 13 L.ed.2d 934

Brady v. Maryland, 10 L.ed.2d 215

Mapp v. Ohio, 367 US 643, 6 L.ed.2d 1081

XXII

THE COURT ERRED IN LIMITING THE CROSS-
EXAMINATION OF ALL THREE DEFENDANTS TO ONE
COUNSEL, ALTHOUGH THEY WERE SEPARATELY REP-
RESENTED BY SEPARATE COUNSEL. THE COURT
STATED HE WOULD NOT LET ANY OTHER DEFENDANT
CROSS-EXAMINE ANY FURTHER ON THE SUBJECT

MATTER ON WHICH ONE COUNSEL HAD EXAMINED.

THIS WAS A DENIAL OF THE RIGHT OF CONFRONTATION OF THE INDIVIDUAL DEFENDANT AND OF CROSS-EXAMINATION BY THE INDIVIDUAL DEFENDANT.

At the outset of the trial, the court stated that only one counsel would be permitted to cross-examine a witness on a subject matter and that the other counsel could not repeat anything or cover anything covered by one counsel. He made this as a rule of procedure for the court where there were three defendants, having three separate counsel, independent of each other.

We respectfully submit that there is no such rule of procedure set forth in the federal rules of Criminal Procedure nor is it authorized, and it effectively denies each defendant effective assistance of counsel of his own choosing.

CONCLUSION

WHEREFORE, appellant prays for reversal of the judgments below and for an order dismissing the indictment for want of jurisdiction of the court and for procedural errors which denied the appellant due process of law under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

In the alternative, appellant prays for reversal of the judgments, and each of them.

Dated: December 23, 1965.

Respectfully submitted,

MORRIS LAVINE

Attorney for Appellant
Joseph Clyde Amsler

CERTIFICATE OF COUNSEL

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Morris Lavine
Attorney for Appellant Joseph
Clyde Amsler

ORIGINAL ARTICLES

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., MAY 1, 1919
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ORIGINAL ARTICLES

THE EFFECT OF VITAMIN C ON THE ABSORPTION OF IRON
BY THE SMALL INTESTINE

By H. W. HENNING, M.D., and J. H. HENNING, M.D.
From the Department of Medicine, University of Illinois
School of Medicine, Chicago, Ill.
(Received for publication, February 1, 1929.)

The purpose of this study was to determine the effect of vitamin C on the absorption of iron from the small intestine. The method used was that of H. W. H. (1927), in which the amount of iron absorbed is determined by the amount of iron excreted in the urine. The results show that the absorption of iron is increased by the administration of vitamin C. This increase is more marked when the iron is administered in the form of ferrous sulfate than when it is administered in the form of ferric chloride. The increase in absorption is also more marked when the iron is administered in the form of a solution than when it is administered in the form of a tablet. The results of this study are in agreement with those of other investigators who have shown that vitamin C increases the absorption of iron.

The effect of vitamin C on the absorption of iron is of importance in the treatment of iron deficiency anemia. The results of this study show that the administration of vitamin C will increase the absorption of iron from the small intestine. This increase in absorption will be of greatest value when the iron is administered in the form of a solution and when it is administered in the form of ferrous sulfate. The results of this study are in agreement with those of other investigators who have shown that vitamin C increases the absorption of iron.

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STATUTES, CONSTITUTIONAL PROVISIONS,

RULES AND ORDERS INVOLVED

Title 18, Section 371, U.S. Codes:

"Conspiracy to commit offense or to defraud United States.

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

Title 18, Section 875(a), U.S. Codes:

"Interstate communications.

"(a) Whoever transmits in interstate commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both."

Title 18, Section 1201, U.S. Codes:

"Transportation.

"(a) Whoever knowingly transports in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed.

"(b) The failure to release the victim within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.

"(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished as provided in subsection (a)."

Title 18, Section 1202, U.S. Codes:

"Ransom money.

"Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

Title 18, Section 3432, U.S. Codes:

"Indictment and list of jurors and witnesses for prisoner in capital cases.

"A person charged with reason or other capital offense shall be least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness."

Fourth Amendment, United States Constitution:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall

issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment, United States Constitution:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Sixth Amendment, United States Constitution:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the

nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

Article 3, Section 2, United States Constitution:

"Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -- to all Cases affecting Ambassadors, other public Ministers and Consuls; -- to all Cases of admiralty and maritime Jurisdiction; -- to Controversies to which the United States shall be a Party; -- to Controversies between two or more States; -- between a State and Citizens of another State; -- between Citizens of different States; -- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

Rule 5, Federal Rules of Criminal Procedure:

" Proceedings before the Commissioner.

"(a) Appearance before the Commissioner.

An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

"(b) Statement by the Commissioner. The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.

"(c) Preliminary Examination. The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the

commissioner shall forthwith hold him to answer in the district court. If the defendant does not waive examination, the commissioner shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If from the evidence it appears to the commissioner that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the commissioner shall forthwith hold him to answer in the district court; otherwise the commissioner shall discharge him. The commissioner shall admit the defendant to bail as provided in these rules. After concluding the proceeding the commissioner shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail taken by him."

Rule 17, Federal Rules of Criminal Procedure:

"Subpoena.

"(a) For Attendance of Witnesses; Form; Issuance. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command

each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served. A subpoena shall be issued by a commissioner in a proceeding before him, but it need not be under the seal of the court.

(b) Indigent Defendants. The court or a judge thereof may order at any time that a subpoena be issued upon motion or request of an indigent defendant. The motion or request shall be supported by affidavit in which the defendant shall state the name and address of each witness and the testimony which he is expected by the defendant to give if subpoenaed, and shall show that the evidence of the witness is material to the defense, that the defendant cannot safely go to trial without the witness and that the defendant does not have sufficient means and is actually unable to pay the fees of the witness. If the court or judge orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar

costs and fees are paid in case of a witness subpoenaed in behalf of the government.

"(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys,

". . ."

Rule 24, Federal Rules of Criminal Procedure:

"(a) Examination. The court may permit the defendant or his attorney and the attorney for the government to conduct the examination of the prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the defendant or his attorney and the attorney for the government to supplement the examina-

tion by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

"(b) Peremptory challenges. If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

"(c) Alternate jurors. The court may direct that not more than 4 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who prior to the time the jury retires to consider its verdict become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges

shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled and two peremptory challenges if three or four alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only and the other peremptory challenges allowed by these rules may not be used against an alternate juror."

Order of the United States District Court for the
Southern District of California, dated
February 14, 1951, filed February 28, 1951:

"UNITED STATES DISTRICT COURT

"SOUTHERN DISTRICT OF CALIFORNIA

IT IS HEREBY ORDERED BY THE COURT that
neither the Clerk nor the Marshal shall reveal
to anyone the names or addresses of persons

called for jury duty, or jurors, except (1)
Upon prior order of court, or (2) Where re-
quired to do so by any applicable law, or (3)
When done in connection with the summoning
of or notification to jurors, or as certified
in vouchers for payment of jury fees.

"Dated: February 14, 1951.

"PAUL J. McCORMICK
"United States District Judge

"LEON R. YANKWICH
"United States District Judge

"C.E. BEAUMONT
"United States District Judge

"BEN HARRISON
"United States District Judge

"F I L E D

"FEB 28 1951 "PEIRSON M. HALL
"United States District Judge

"EDMUND L. SMITH, "WM. C. MATHES
"Clerk "United States District Judge

"JACOB WEINBERGER
"United States District Judge

"HARRY C. WESTOVER
"United States District Judge

"JAMES M. CARTER
"United States District Judge

"WM. M. BYRNE
"United States District Judge"

Order of the United States District Court for the
Southern District of California, dated January
20, 1964, filed January 20, 1964.

"UNITED STATES DISTRICT COURT

"SOUTHERN DISTRICT OF CALIFORNIA

"In the Matter of Photographing,)
Broadcasting, Telecasting in)
Courtrooms, et cetera.)

ORDER

F I L E D

JAN 20 1964

Clerk, U.S. District
Court, Southern Dis-
trict of California
By E. Drew, Deputy

WHEREAS, the Judicial Conference of the United States, at its meeting on March 8-9, 1962, adopted the following resolution (Report of the Judicial Conference of the United States proceedings March 8-9, 1962):

"Resolved, That the Judicial Conference of the U.S. condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not to be permitted in any federal court."

and,

"WHEREAS, said Resolution enlarges the provisions of Federal Rules of Criminal Procedure,

Rule 53, prohibiting photographing, broadcasting and televising in courtrooms during the progress of judicial proceedings so as to include not only criminal but also civil proceedings, and so as to exclude photographing, broadcasting and televising not only from the courtrooms, but also from its 'environs'; and

'WHEREAS, Canon 35 of the American Bar Association provides in part as follows:

'Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom during sessions of court, recesses, or between sessions, and the broadcasting or televising of court proceedings are calculated to detract from the essential dignity of the proceedings, distract the witness so that his testimony degrades the court and creates misconception with respect thereto in the minds of the public, and should not be permitted.'

and

'WHEREAS, this Court requested clarification of the above quoted Resolution of the Judicial Conference of the United States as it may affect Naturalization proceedings and

was advised that this matter had specifically been considered and that the Resolution did not exclude Naturalization proceedings, even though American Bar Association Canon 35, in a portion not quoted, excepted such proceedings from the Canon; and

"WHEREAS, subsequently thereto the Judicial Conference of the Ninth Circuit requested an amendment to the Resolution to permit "news media" courtroom photography or telecasting of naturalization and ceremonial matters to be had in accordance with local rule of court, which request has not yet been acted upon; and

"WHEREAS, in order to avoid misunderstanding with representatives of news media, it appears necessary to clarify the subject of photography, telecasting and broadcasting from or in the courts and environs in order to conform to the standards set by the Judicial Conference of the United States;

"NOW, THEREFORE, IT IS HEREBY ORDERED that all forms, means and manner of taking photographs, or broadcasting or televising on or from the entire second floor or any part thereof, and Hearing Rooms No. 1 and No. 2 and corridors leading thereto on the Main Street

Floor, of the United States Post Office and Court House Building, located at 312 North Spring Street, Los Angeles, California, are hereby prohibited during the course of, or in connection with, any judicial proceedings, whether court is actually in session or not.

"Dated: January 20, 1964.

"Peirson M. Hall

"Peirson M. Hall, Chief U.S. District Judge

"Leon R. Yankwich

"Leon R. Yankwich, U.S. District Judge

"Wm. C. Mathes

"Wm. C. Mathes, U.S. District Judge

"Harry C. Westover

"Harry C. Westover, U.S. District Judge

"James M. Carter

"James M. Carter, U.S. District Judge

"Wm. M. Byrne

"Wm. M. Byrne, U.S. District Judge

"Thurmond Clarke

"Thurmond Clarke, U.S. District Judge

"----- (Absent)

"Fred Kunzel, U.S. District Judge

"M.D. Crocker

"M.D. Crocker, U.S. District Judge

"Albert Lee Stephens, Jr.

"Albert Lee Stephens, Jr., U.S. District Judge

"Charles H. Carr

"Charles H. Carr, U.S. District Judge

"Jesse W. Curtis

"Jesse W. Curtis, U.S. District Judge

Chapter II, Rule 3, Local Rules, United States Dis-
trict Court for the Southern District of
California, Central Division:

'NEW RULES GOVERNING ASSIGNMENT.

'Rule 3. The criminal calendar of the central
division.

'It is Ordered:

"(1) All criminal cases and proceedings
filed in the Central Division of this Court
shall be assigned to a Judge of the Central
Division, other than the Chief Judge, in the
order of seniority to begin with Judge Harry
C. Westover who is hereby assigned as such
Judge until January 1, 1962.

"(2) The Judge of the Criminal Department
shall preside over the criminal calendar for
a period of a calendar year, to be followed,
for a like period, by another Judge in the
order of seniority, excluding the Chief
Judge and Judges assigned regularly to the
Northern and Southern Divisions of the Dis-
trict.

"3(a) Each Judge to whom is assigned the
criminal calendar shall hear all arraignments,

pleas, motions and proceedings other than trials, provided that when a case has been transferred from the Criminal Department, and a superseding or other indictment or information relating to the same case is filed, all arraignments, pleas, motions and other proceedings shall be heard by the Judge to whom the original case was transferred.

"(b) When a plea of guilty or nolo contendere is entered, the Judge in the Criminal Department shall retain the case for disposition and sentence.

"(c) When a plea of not guilty is entered, the Judge in the Criminal Department shall transfer the case, in the order now employed by the Clerk of this Court in assigning civil cases to the Judges upon filing, to another Judge regularly assigned and sitting full time in the Central Division, other than the Chief Judge and himself, for setting on his own calendar.

"(d) The Judge in the Criminal Department may also transfer to another Judge, in the manner herein provided, the hearing of motions or proceedings, in any case, when he is of the view that the matter involves questions of law or fact which should be deter-

mined by the Judge who is to try the case. He may also take over for trial from another Judge any criminal case, if both Judges so agree.

"(4) The Judge in the Criminal Department is hereby empowered during his incumbency, to transfer, in the manner provided in 3(c) and 3(d) hereof, motions or matters and cases for trial to the Judges regularly assigned and sitting full time in the Central Division, other than the Chief Judge, each of whom shall accept the motions, matters and cases so transferred, unless he is disqualified.

"(5) When a plea of not guilty has been entered and the Clerk has opened the envelope to remove the card indicating the name of the transferee Judge, all further proceedings, including a change of plea, shall be before the transferee Judge.

"(6) Whenever the Judge in the Criminal Department is unable, for any period of time, because of illness, disability, unavoidable absence or other justifiable causes, to perform his duties, he is authorized to arrange with any other Judge of the District for the performance of his duties. Should he fail or be unable to do so, the Chief Judge may

designate another Judge to perform such duties during such period of inability or disability.

"(7) Rule III of the 'Rules Governing Assignment' (the text of which is printed on pages 43 and 44 of the Printed Rules of this Court) is hereby rescinded in its entirety.

"(8) The Order of the Judges of this Court dated April 4, 1960, filed April 11, 1960, entitled 'Civil Case Credit for Short Criminal Cases,' is hereby also rescinded in its entirety.

"(9) Rule II of the 'Rules Governing Assignment' (the text of which is printed on page 42 of the Printed Rules of this Court) is hereby amended by striking the word 'civil' wherever it occurs in that Rule, including the Title thereof."

COURT RE CONSPIRACY

(The following instructions given by the court on the subject of conspiracy are taken from pages 4233-4242 of the reporter's transcript.)

"In connection with Count Two, you are instructed that an act of Congress provides: 'If two or more persons conspire either to commit an offense against the United States and any one or more such persons do any act to effect the object of the conspiracy, each shall be guilty of a crime.'

"Members of the jury, you are instructed that a conspiracy may be defined as a combination of two or more persons who, by concerted action, seek to accomplish a criminal or unlawful purpose or to accomplish some purpose not in itself unlawful or criminal but by unlawful or criminal means. The gist of the offense is the unlawful combination or agreement to violate the laws of the United States, followed by an overt act in furtherance of an object of the conspiracy. From this definition, you will observe that there are three essential and necessary elements of a criminal conspiracy: First, an agreement or understanding by two or more persons which contemplates their concerted action.

"Two objectives of such agreement or understanding, one or more of which, if accomplished, would constitute a criminal offense against the United States. Third, the

performing of one or more overt acts furthering such objective by one or more of the members of the conspiracy.

"It then follows that in order for the Government to establish and for you to convict any of the defendants of the conspiracy charged in Count One it is necessary for the Government to prove to you by satisfactory evidence beyond a reasonable doubt each of the following four material and essential elements of the alleged crime of conspiracy as charged.

"These elements are: First, that the conspiracy described was formed and this is at or about the time alleged; two, that the defendants knowingly and willfully became members of the conspiracy; that is, any two or more of the defendants; three, that one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment at or about the time and place alleged; and, fourth, that such overt act was committed in furtherance of some object or purpose of the conspiracy as charged.

"If you find from the evidence beyond a reasonable doubt that the existence of the conspiracy as charged has been proved and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy as charged, proof of the conspiracy offense charged has been complete. And it is complete as to every person found by you to have been know-

ingly and willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

"To constitute a conspiracy it is not necessary that the persons involved should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that by written or spoken word that they should directly state what their unlawful scheme is to be.

"The details of the plan and the specific means by which the unlawful scheme is to be made effective, it is sufficient if two or more of the defendants in any manner or through any contrivance impliedly or passively come to a mutual understanding to accomplish a common and unlawful design knowing and specifically intending the accomplishment of one or more criminal objectives thereof, and that pursuant to such understanding one or more of such defendants committed one or more of the overt acts in furtherance of the conspiracy.

"Where an unlawful objective is sought to be effected by two or more persons actuated by common purpose and intent of accomplishing that end, and they work together in any way in furtherance of the unlawful scheme, every one of such persons become a member of the conspiracy, however important, dominant or minor the part of each may be or whether it be executed together or at a remote distance from the other activities of other conspirators.

"All of the conspirators need not have originally

conceived the conspiracy or participated in its conception. Those who join in a previously existing conspiracy with knowledge and specific intent to accomplish an unlawful objective, and who cooperate in the common effort to that end become parties to the conspiracy.

"All of the conspirators need not be acquainted with all others or know all others that may be involved. They may not have previously associated together. If persons act together to accomplish unlawful objectives, a conspiracy is shown even though the individual conspirators may have done acts in furtherance of the common unlawful design apart and unknown to the other conspirators.

"Of course, mere personal or business association with members of a conspiracy by a defendant standing alone would not establish participation in the conspiracy by such a defendant.

"Any persons entering into a conspiracy subsequent to its formation with knowledge of its existence and objectives are regarded in law as parties to all of the acts done by any of the other parties before or after in furtherance of the common design.

"Persons may be guilty of being parties to a conspiracy even though it be unsuccessful and the objects of the conspiracy never be accomplished. On the other hand, proof concerning the success of a conspiracy and the accomplishments of its objects may be persuasive evidence of the existence of the conspiracy itself.

"Although the conspiracy count charges various means were used to accomplish the alleged conspiratorial object -- objectives, it is not incumbent upon the Government to prove that all of the means set out in the conspiracy count were in fact agreed upon to carry out the conspiracy or that all of them were actually used or put into operation. It is sufficient if it be established beyond a reasonable doubt that one or more of the means described in the indictment was agreed upon to be used to effect the conspiracy.

"A conspiracy is not ended so long as the evidence showed an intention of the conspirators to continue it, even though there may be intervals between the actions furthering the same conspiracy. Each alleged conspirator who is the agent of the other conspirator at all times during the life of the conspiracy remains an agent during all of its existence.

"Once a conspiracy has been shown to exist, it is presumed to continue until its object is accomplished or it is otherwise terminated by a withdrawal by a conspirator as to himself.

"Once it is determined beyond a reasonable doubt that a defendant is a member of the conspiracy he is presumed to continue as a conspirator until he disassociates himself from the conspiracy by means of an affirmative acts of withdrawal.

"Mere temporary inactivity or lack of enthusiasm by

a member of an existing conspiracy standing alone is not sufficient to constitute a withdrawal of such member from the conspiracy.

"In this case, particularly, you were instructed and you are instructed again that if you find any one of the defendants if he were a conspirator voluntarily surrendered himself to the authorities that would be a withdrawal from any conspiracy that you may have found him to be associated with.

"And you are further instructed that if any one or more of the defendants were a member of a conspiracy; that is, if you so find, then you are instructed that his arrest or his apprehension by the authorities would effectuate his withdrawal from any such conspiracy.

"In considering whether or not each particular defendant was a member of the conspiracy, you must do so without regard to and independently of the statement or declarations of other co-conspirators. That is to say, you must determine the issue as to each defendant's membership in the conspiracy from the evidence of his own statements, declarations, actions and conduct.

"You will recall that during the trial it was emphasized from time to time that the testimony concerning acts and statements made by one alleged co-conspirator in the absence of other defendants or alleged co-conspirators was received in evidence on a conditional or tentative basis. The testimony concerning such acts,

declarations or admissions was received in evidence at the time only against the particular person making such.

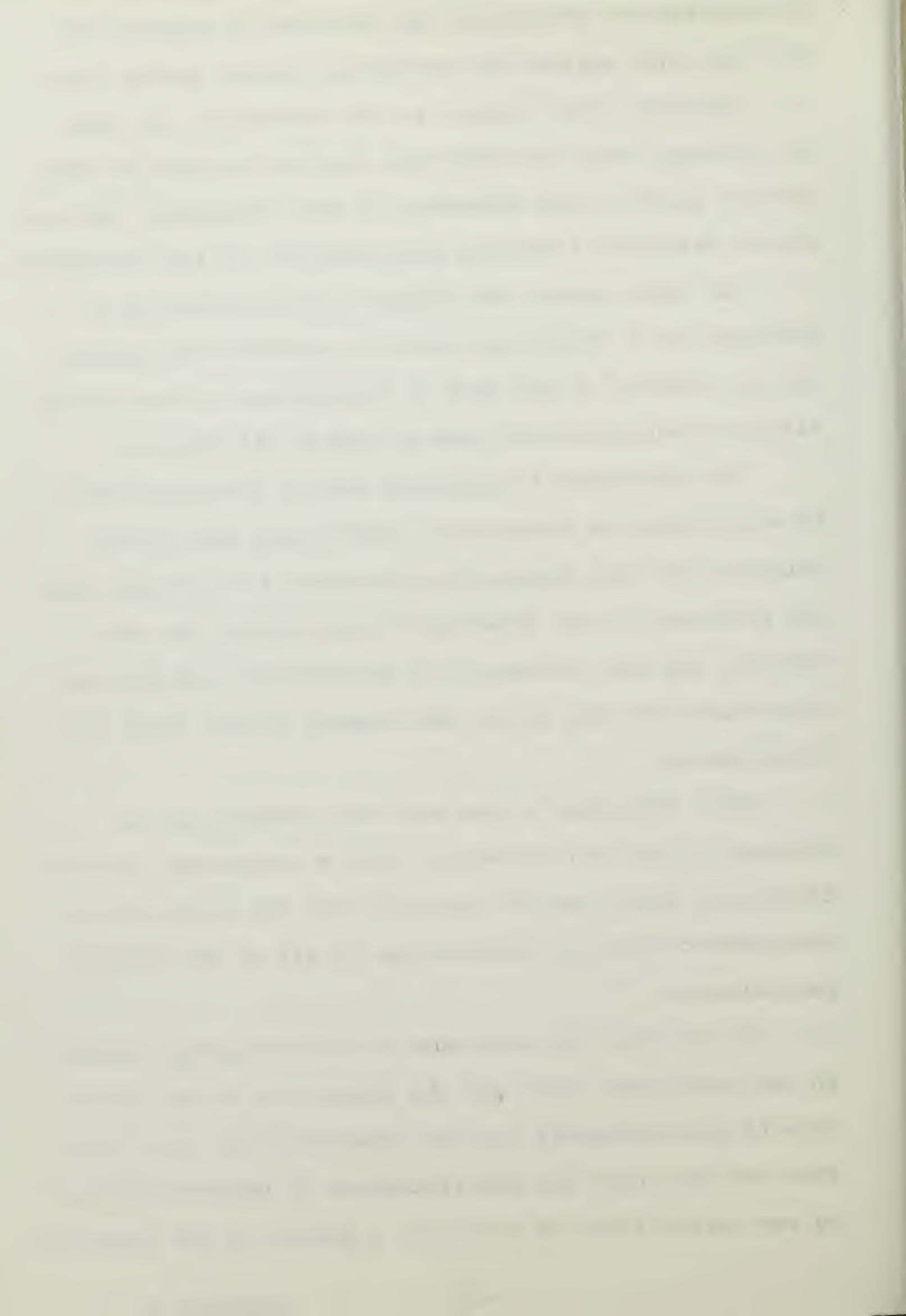
"However, with respect to the defendants who were not present, such testimony was received subject to independent proof of the existence of the conspiracy, and such absent defendant's knowing participation in the conspiracy.

"In other words, the alleged participation by a defendant in a conspiracy cannot be established against him by evidence of the acts or declarations of any of his alleged co-conspirators done or made in his absence.

"The defendants' connection with a conspiracy must be established by independent proof based upon direct evidence and upon reasonable inferences to be drawn from the evidence of such defendant's own action, his own conduct, his own statements or declarations and his own connection with the action and conduct of the other co-conspirators.

"Each defendant's acts and declarations may be evidence of his own connection with a conspiracy, and the conspiracy itself may be proved by the sum total of the independent acts and declarations of all of the alleged participants.

"If and when the existence of the conspiracy charged in the conspiracy count and the membership of any two or more of the defendants in such conspiracy has been found, then the acts done and the statements or declarations made by any person found by you to be a member of the conspiracy



at the time may be considered in connection with the case as to any defendant whom you find to have been a member of the conspiracy at the same time, even though such acts and declarations may have been made in the absence and without the knowledge of such defendant, provided such acts were done and such statements or declarations were made during the continuance of such conspiracy and in furtherance of an objective or purpose of the conspiracy.

"So, if you conclude from the evidence that any two or more of the defendants were a member of the conspiracy, and you do so based upon the evidence, the independent evidence concerning the acts and statements of the particular defendant, as you have already been told, you may then consider it as made by him any statement or declaration of other members of the conspiracy even though they were not named as defendants in the indictment, provided such statements or declarations were made during the existence of the conspiracy and in furtherance of an object or purpose of the conspiracy as charged in the conspiracy count.

"A statement or act to be made in furtherance of a conspiracy must be made during the existence of a conspiracy. If you should determine that certain acts or conversations took place either before the commencement of the conspiracy or after its termination, if there was a conspiracy, you may consider such acts or statements only as against the person making such statements or

performing such acts.

"Now, finally, in connection with the conspiracy count, in order to sustain a conviction of any defendant on the conspiracy count you must find that at least one of the overt acts charged in the indictment was committed by at least one of the conspirators within the Southern District of California. And in that connection you are instructed as a matter of judicial notice that the Los Angeles-Santa Monica area and the Canoga Park area in the Valley referred to in the testimony is within the Southern District of California and that such overt act advanced the objects of the conspiracy.

"It is not necessary that you find either that all defendants committed an overt act or that all alleged overt acts were in fact committed.

"If it appears from the evidence beyond a reasonable doubt that the conspiracy was knowingly and willfully formed by any two or more of the defendants as charged, and that such two or more defendants knowingly and willfully became members of the conspiracy at the inception of the plan or the scheme, or afterwards, and that afterwards one or more of the conspirators knowingly committed in furtherance of an object or purpose of the conspiracy one or more of the overt acts charged, then the success or failure of the conspiracy to accomplish the common object or purpose is immaterial.

"By the term 'overt act' is meant any act committed

by any one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act in and of itself need not be criminal in nature if considered separately and apart from the conspiracy. It may be as innocent as the act in and of itself of a man walking across the street or driving an automobile. It must, however, be an act which follows and tends towards accomplishment of the plan or scheme, and it must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the conspiracy count."

INSTRUCTION GIVEN BY THE JUDGE RE KID-
NAPING AND CONSENT, WHICH INVADED THE
PROVINCE OF THE JURY AS THE FINDER OF
THE FACT

(The following instruction given by the court is taken from pages 4244-4247 of the reporter's transcript.)

"Members of the jury, this Act of Congress referred to 'a person who had been unlawfully seized or kidnaped or carried away.' In this connection you are instructed that an unlawful seizure or kidnaping of a person means the act or acts of a persons of holding a seized person for a proscribed purpose, and this necessarily implies an unlawful physical or mental restraint for an appreciable period of time against the victim's will and consent and with willful intent on the part of the actors so to confine the victim. In connection with the defendants' theory, you are instructed that if you find from the evidence in this case that the act of alleged kidnaping as charged in count 2 was prearranged by Frank Sinatra, Jr., or any person on his behalf for publicity, advertising, or otherwise, you must acquit the three defendants on the conspiracy charge to violate the kidnaping laws of the United States and of the kidnaping of Frank Sinatra, Jr., as charged in count 2.

"In connection with this phase of the defendants' theory, you are advised that there is no direct evidence in this case to the effect that Frank Sinatra, Jr., or any

person on his behalf ever made any prearrangement with any of the defendants or, for that matter, with any person for his false abduction and holding for ransom for publicity or for any other purpose. I suggest to you that you have only the statement of the defendants' counsel in this regard. Particularly you are advised that the testimony of Amsler and Irwin to the effect that Keenan had told them at a time prior to the alleged abduction and kidnaping that Frank Sinatra, Jr., had known about it or was in on it or words to that effect must be considered by you with care and caution for the reason that such hearsay testimony is not evidence and cannot be considered by you as tending to prove the truth of the substance of Keenan's claimed statements to Amsler or Irwin. In that regard, you may consider such testimony only so far as you should find that it tends to reveal to you the belief or intent on the part of Amsler or Irwin respectively in connection with their acts and doings as revealed to you by their testimony and the evidence on behalf of the government.

"As noted to you, one of the special ingredients of the alleged crime of unlawful kidnaping as charged in count 2 is the lack of free will consent on the part of the alleged victim Frank Sinatra, Jr., to be taken, transported, and removed from one State to another for the purpose of ransom. Therefore, when one in the exercise of his own free will and with knowledge of what is taking

place with respect to his person voluntarily and willingly consents to accompany another, the latter cannot be guilty of kidnaping the former so long as such condition of free will consent exists. And in this connection you are instructed that a voluntary or free will consent on the part of any person may be expressly or impliedly given by him.

"It has been pointed out to you that Frank Sinatra, Jr., in answering some of the defense counsel's questions, stated in effect he consented to the acts and conduct of the defendants Keenan and Amsler of taking him from his room and transporting him. I point out to you that Frank Sinatra, Jr., also stated that he cooperated or complied with the defendants' requests.

"Members of the jury, it is for you to interpret these expressions of language and determine therefrom your interpretation of whether Frank Sinatra, Jr., acknowledged or expressed a free will consent to be taken and transported as revealed in the evidence or he was then acting under some physical or mental restraint.

"You as trial jurors may or you may not find a free will consent to have been impliedly given from action as well as inaction on the part of Frank Sinatra, Jr., when such action or inaction, as the case may be, and as found by you on the part of Frank Sinatra, Jr., is viewed in the light of all of the surrounding facts and circumstances and with reason and common sense.

"If you find from the evidence that one or both of the defendants Keenan and Amsler threatened Frank Sinatra, Jr., at any given time with a pistol or pistols in a menacing manner or made commands or threats therewith, then you as trial jurors may, if you wish, infer from such menacing use or verbal threats of shooting, pistol or pistols, if any, that the pistol or pistols were loaded with bullets and being then capable of causing bodily harm. And I would comment that you could infer, if you wish, that Frank Sinatra, Jr., so inferred and acted accordingly."

1. The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the system has solutions for all values of the parameters α and β if the function $f(x)$ is continuous and has a bounded derivative. The second part of the paper is devoted to a detailed study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) are unique and depend continuously on the parameters α and β . The third part of the paper is devoted to a study of the asymptotic properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) have the asymptotic properties of the solutions of the system of equations (2) for arbitrary values of the parameters α and β .

DEFENSE OBJECTIONS TO INSTRUCTIONS

GIVEN BY THE COURT

(The following objections by the defense to instructions given by the court are found on pages 4279-4288 of the reporter's transcript.)

"THE COURT: Defendant Keenan may proceed with his exceptions.

"MR. CROUCH: Yes, your Honor. Your Honor, I would first like to renew all our general objections to the admission of the instructions that we discussed yesterday, but I -- the one thing that does worry me, your Honor, is your Honor's early comments on the evidence in regard to threats, guns, intimation. I think your Honor, at the time he made this -- these comments to the jury informed them that these were comments of your Honor and that they were to -- if I remember correctly, were to utilize them as inferences only.

"Now, as a practical matter, your Honor, I don't think at that stage of the charge to the jury, first, that the jury really understands what an inference is. Secondly, I don't think that at that stage, your Honor, that they really understand the distinction between instructions on your part and comments from his Honor. And I think your Honor in making the comments he did has invaded the province of the jury, because I think these are facts which would be -- should be left entirely to the jury and not be commented on by your Honor.

"Your Honor has commented several times and, correctly, to the jury that they are the sole judges of the facts. But I feel, your Honor, that you have invaded the province of the jury by making those comments.

"THE COURT: No. It's not invading their province to say or suggest to them that they might draw that inference if they wish. That's all I say. But you may have your exception.

"MR. CROUCH: Thank you.

"MR. LAVINE: Your Honor, I reserve all of the exceptions to the instructions which I offered and which your Honor rejected heretofore. That is the first matter that I want to preserve.

"Now, coming to the same matter that Mr. Crouch discussed, I respectfully state that your Honor's comments were as unfair in that they did not give two sides of the matter. The law in respect to a judge's comments in the Federal Court, as I understand it, is that the judge must give both sides of the matter if he comments at all.

"THE COURT: What did I leave out?

"MR. LAVINE: Well, you commented about the pistol but you did not comment that the defendants contend that this was all a play, that it was according to a script and that it was the defendants' contention that this was only a part of a -- a plan of a hoax or publicity.

"Your Honor left out the defendants' side of it in giving any comments at all. Your Honor did not say at the

outset of those comments that they were -- that they were not instructions. Your Honor started out and said that you would -- did differentiate between instructions and advice, and then your Honor went on, and the jury got these, apparently, as instructions. They couldn't help but feel that way about it as your Honor gave them. So, that's my objection to that. I respectfully request your Honor to inform the jury that this was merely a suggestion or advice and not an instruction as you had heretofore defined it.

"THE COURT: I will certainly caution them again on that regard.

"MR. LAVINE: Now, the next point that I wish to point out also is that you also stated that there was no evidence that Frank Sinatra, Jr., had in any way had any previous knowledge or had --

"THE COURT: Prearrangement.

"MR. LAVINE: -- any matter in connection with it except the statements that were made by Mr. Amsler and Mr. Irwin, and that those were hearsay statements. And I respectfully submit that that was an unfair comment, that the jury had a right -- has a right to infer from all of the evidence whether, in fact, those matters did occur. That was the testimony of Mr. Amsler and Mr. Irwin, and they -- and the jury has a right to determine if it is hearsay or if they had a right to rely on it, and I respectfully submit that was an unfair comment that

invaded the province of the jury. I ask your Honor also to instruct the jury that that was only a comment. Also, that your Honor comment -- discuss that that is only a comment and not an instruction to the jury.

"THE COURT: You may have an exception.

"MR. LAVINE: Also, that the circumstances and conditions and all the facts in the case can override and form the basis of an inference which the jury itself can form from all of the evidence.

"THE COURT: Oh, I certainly told them that.

"MR. LAVINE: All right. You didn't mention it was a comment, your Honor, in your matter.

"Now, I also respectfully request to your Honor in connection with counts 3, 4, 5 and 6, if the jury finds the defendants not guilty as to counts 1 and 2, there would be no basis for their coming to a verdict of guilty in counts 3, 4, 5 and 6. Those counts depend upon a kidnapping.

"THE COURT: No, not necessarily.

"MR. LAVINE: Well, this is my contention, your Honor, that it does. And if there is -- your instruction on counts 3, 4, 5, and 6 --

"THE COURT: I would suggest to you that if they should find not guilty verdicts on counts 1 and 2 and then find a guilty verdict on the others, that would be the appropriate time to raise your question.

"MR. LAVINE: Well, no, your Honor, because I think

they are entitled to be instructed that one of the elements in counts 3, 4 and 5 -- let's take those three counts -- must be that there must be a kidnaping.

"THE COURT: I certainly told them that.

"MR. LAVINE: Well, I did not follow your instruction to that extent. Your Honor simply said that the elements were that there must be a transmission of an interstate communication and also a demand or a request for release of a person for ransom or reward, but that doesn't mean that they necessarily have to be kidnaped. In other words --

"THE COURT: Let me read to you the elements which you have had a copy of all the time. They are as follows, three elements: First, the knowing transportation in interstate commerce of a person, namely, Frank Sinatra, Jr., who had been unlawfully seized or kidnaped and carried away and held for ransom.

"MR. LAVINE: Also as to count 6, the same point, your Honor. I would -- now, I am also --

"THE COURT: I would submit to you that in count 6, there might be a question for you to raise in the event of inconsistent verdicts. But on the other hand, assuming that there was never a kidnaping, that the representation was made over the phone to Frank Sinatra, Sr., and he sent the money and it was acquired and spent --

"MR. LAVINE: Well --

"THE COURT: No, I don't follow you. You may have

your exception.

"MR. LAVINE: All right.

"MR. CROUCH: I think that might be a crime, your Honor, but I don't think it would be receipt of ransom money.

"THE COURT: Let's wait until we get into inconsistent verdicts.

"MR. CROUCH: All right.

"MR. LAVINE: Now, if your Honor pleases, at the outset of your Honor's remarks to the jury, your Honor stated that insofar as your Honor's instructions were concerned, that if they were erroneous, there was an ample remedy by way of appeal.

"THE COURT: Yes.

"MR. LAVINE: Now, I don't think the question of appeal is a matter for this jury to have before it in any event. It is not to influence their verdict if there is an appeal on a question of law. They are the determinators of the facts. They are the ones that determine the facts. And I respectfully ask your Honor to tell them that they are in no way concerned with -- they must follow your Honor's instructions as the law of this court and not be concerned on the --

"THE COURT: That is just a matter of emphasis in my opinion of recalling to them that they should follow them. They might think the court is wrong like you, and wouldn't follow them. Therefore --

"MR. LAVINE: Well, I don't want them to think that an appeal has anything to do with their verdict. That is the main point.

"THE COURT: I am sure that they are not misled on that.

"MR. LAVINE: Well, the other point that I wish to make, your Honor, is on the question of the confessions. There was no instruction given by your Honor that if they find that if the matters obtained by confession were illegally obtained, that the matters elicited on cross examination from those alleged confessions --

"THE COURT: No, that is a matter of law that is on my shoulders.

"MR. LAVINE: Well --

"THE COURT: They are not concerned with that at all.

"MR. LAVINE: Well, I am asking your Honor to give that instruction to the jury.

"THE COURT: Yes. It will be denied, and you may have your exception.

"MR. LAVINE: All right. Then on the question of the confession of Irwin, Mrs. Root has asked me to call this to your Honor's attention: That if they find that that is not a confession but an interpretation by the arresting officer, that they can so determine.

"THE COURT: The request for further instructions will be denied.

"MR. LAVINE: Now, your Honor, also on the question

of reasonable doubt, there has been considerable question about the instruction in the language that your Honor gave it. I think the Supreme Court had it up a term or two ago, and I want to take exception to the instruction that your Honor gave in the form that you gave it.

"THE COURT: You certainly may have your exception.

"MR. LAVINE: All right.

"THE COURT: Now, if the Supreme Court would just give us a definition for reasonable doubt, we wouldn't have any trouble.

"MR. LAVINE: Well, I appreciate that. They have discussed it, but have not concluded what should be given.

"I do ask your Honor to give the jury this additional instruction which is in Form 4 of the 20 Federal Rules Decisions, just this one paragraph, and I can hand it up to your Honor.

"THE COURT: I don't have that particular one or any cross reference to it.

"MR. LAVINE: I can't mark it, but it is the third paragraph.

"THE COURT: 'A reasonable doubt may not only arise from the evidence produced but also from the lack of evidence.'

"MR. LAVINE: Yes, your Honor.

"THE COURT: I gave that.

"MR. LAVINE: Not entirely, your Honor. You gave that one sentence, but the rest of it I did not hear your

Honor give that; that the defendant may rely on matters brought out on cross examination and so forth. I thought I heard all that you gave. It is just that one paragraph. I didn't hear the rest of it, your Honor. I don't know --

"THE COURT: I told them that all of the evidence in the case was -- I have no desire not to give this to them. I don't think it is -- I think it has been covered. But if you request it, I will give it to you.

"MR. LAVINE: Yes, your Honor. That is all I have."

DEFENDANTS' PROPOSED JURY

INSTRUCTIONS REJECTED BY THE COURT

(The following jury instructions proposed by the defendants were rejected by the court.)

"DEFENDANTS' PROPOSED INSTRUCTION NO. 1

"If you find that Frank Sinatra, Jr., consented and volunteered to be transferred from the State of Nevada to the State of California and that his acts of transportation were voluntary, you must find the accused not guilty." (C.T. 117)

"DEFENDANTS' PROPOSED INSTRUCTION NO. 2

"One of the essential elements of the crimes charged in this indictment is lack of consent on the part of the alleged victim, Frank Sinatra, Jr., to be taken, transported and removed from one state to another for the purpose of ransom. If you find that he consented and was a part of the plan, then you must acquit the accused." (C.T. 118)

"DEFENDANTS' PROPOSED INSTRUCTION NO. 3

"If you believe that Frank Sinatra, Sr., put up \$240,000.00 in money for the purposes of getting publicity for his son and not for ransom, you must acquit the accused." (C.T. 119)

"DEFENDANTS' PROPOSED INSTRUCTION NO. 4

"Consent may be express or implied, and it may be implied from action as well as inaction.

"Sorrells v. United States, 57 Fed.2d 973"

(C.T. 120)

"DEFENDANTS' PROPOSED INSTRUCTION NO. 5

"Consent may be proved directly or indirectly, specifically or by inference. In this connection the accused may rely not only upon the direct testimony in the case, but on all proper inferences and circumstances surrounding it, whether produced by themselves or through witnesses for the government.

"Sorrells v. United States, 57 Fed.2d 973"

(C.T. 121)

'DEFENDANTS' PROPOSED INSTRUCTION NO. 6

"The absence of consent is an element which the government must prove in this case beyond a reasonable doubt. If, therefore, in the evidence as you have heard it the defense has created a reasonable doubt in your mind as to the absence of consent, you must acquit the accused.

"Sorrells v. United States, 57 Fed.2d 973"

(C.T. 122)

DEFENDANTS' PROPOSED INSTRUCTION NO. 7

"In this case, the element of specific intent to commit a crime is essential before you can convict. If you find that the transactions were youthful pranks and not a crime, you must acquit the accused.

"Sorrells v. United States, 57 Fed.2d 973"

(C.T. 123)

DEFENDANTS' PROPOSED INSTRUCTION NO. 8

"There are certain types of crimes where the want of consent of the person affected is an essential element of the crime. The crime charged here of conspiracy to commit kidnapping is such an offense. If you find that there was consent, or if the evidence in this case raises a reasonable doubt in your mind as to whether there

was consent or that inducement to carry out the transaction supplies the consent, you must acquit the accused.

"Sorrells v. United States, 57 Fed.2d 973"

(C.T. 124)

DEFENDANTS' PROPOSED INSTRUCTION NO. 9

"Consent will, as a matter of law, neutralize the otherwise criminal quality of the acts charged.

"Sorrells v. United States, 57 Fed.2d 973

at 974"

(C.T. 125)

DEFENDANTS' PROPOSED INSTRUCTION NO. 10

"In the case involved here, the want of consent of the person affected is an essential element of the crime and if you find in this case that Frank Sinatra, Jr., consented, either directly or induced the action committed, you must find the accused not guilty.

"Sorrells v. United States, 57 Fed.2d 973

at 974"

(C.T. 126)

'DEFENDANTS' PROPOSED INSTRUCTION NO. 11

"If you find that there was arrangement and consent by Frank Sinatra, Jr., to the transactions involved, you must find the accused not guilty.

"Sorrells v. United States, 57 Fed.2d 974"

(C.T. 127)

'DEFENDANTS' PROPOSED INSTRUCTION NO. 12

"If you find in this case that the acts charged were prearranged for publicity or advertising or otherwise than for ransom or reward, you must acquit the accused.

"Sorrells v. United States, 57 Fed.2d 973"

(C.T. 128)

'DEFENDANTS' PROPOSED INSTRUCTION NO. 13

"You are instructed that the defendants assert that the statements obtained after their arrest were obtained illegally through long detention, through late questioning, through the absence and denial of counsel and through other methods which are forbidden in the federal practice. It is for you to determine whether such statements were obtained after the arrest of the defendants in violation

of their constitutional rights and if you find that they were so obtained, then you must totally disregard such statements so obtained.

'Wilson v. United States, 162 US 623

'United States v. Lydecker, 275 F. 976, 978

'Lisenba v. California, 314 US 219, 86 L.ed. 166

'Reck v. Pate, 367 US 433, 440, 6 L.ed.2d 948,
953

'Chambers v. Florida, 309 US 227, 84 L.ed. 716

'Blackburn v. Alabama, 361 US 199, 206, 4 L.ed.
2d 242

'Turner v. Pennsylvania, 338 US 62, 93 L.ed. 1810"

(C.T. 129)

'DEFENDANTS' PROPOSED INSTRUCTION NO. 21

"Kidnapping in its ordinary sense and as it applies to this case is defined as the consideration paid for the release of a person or property captured or detained. If money or property, or any part of it, was put up to secure publicity for Frank Sinatra, Jr., and was not for the purpose of securing the release of Frank Sinatra, Jr., then you must acquit the accused."

(C.T. 137)

DEFENSE COUNSELS' ARGUMENT RE

SUBPOENA ISSUED BY THE DEFENSE

FOR FRANK SINATRA, SR.

(The following argument is taken from pages 2978-2983 of the reporter's transcript.)

'MR. LAVINE: ... We have in good faith requested Frank Sinatra, Sr. to be here because he is vital to determine the purpose of the money which was put up. This is one of the great issues in this case, if your Honor pleases, whether it was put up actually for ransom or reward or for some other purpose of whether it was put up for publicity or whether it was put up as some other scheme or device to advance the interest of Frank Sinatra, Sr. and Frank Sinatra, Jr. This is the area which we had hoped to go into, but since counsel has made a statement as to an abuse of process, we answer it.

'We think maybe the abuse of process is by the complainants in this case or by his clients or his son, and this is what we desire to explore.

'Now, we are prepared to go into the issue, and I was prepared to go into the issue of how this money was raised. I told your Honor that matter before. I wanted to know what the transactions were, when he first learned of this alleged kidnaping, when he first started negotiating, what he said, what he did, and what has been done subsequently with reference to Mahoney, his publicity man, and all of the circumstances with reference to it. We

have a defense, your Honor, that we have presented in our opening statement, and we have a right to present our case in accordance with our defense. We are not responsible for business trips or other matters that parties in this case may take.

"We did not know that Mr. Sinatra, Sr. was going to Japan. We have every consideration of any witness that may come up, but we have a duty to our client to present our client's -- and I am speaking now for other counsel, also, as to the circumstances regarding this entire transaction.

"The first count and Count VI charges -- and Count II charges that money was secured for ransom or reward, I haven't yet heard and I have yet been able -- unable to connect the particular monies involved, and I asked questions last week of one of the witnesses for the Government which your Honor allowed me to ask and which were highly proper and necessary as to the conversations which took place with reference to the securing of this \$239,985.

"Now, I have a right to determine the state of mind of Frank Sinatra, Sr. if he directed that money to be secured. I have a right to determine whether it was put up merely for the purposes of entrapment of these defendants and to bring about their arrest, whether it was lawful or unlawful entrapment, and I have a right to determine what his state of mind was with reference to the securing of that money. I can only secure it from him

personally. Neither Mr. Rudin nor anybody else can tell what Mr. Sinatra's state of mind was nor with reference to the transaction. I therefore respectfully submit that I have a right to have him here for that purpose.

"I regret that he is abroad, but if your Honor feels that we cannot go into this area, then we respectfully submit the matter. And I think -- may I have just a moment with counsel for the other defendants, because I am not speaking for them at this point? I am speaking for my client alone.

"I have one other area also, and I was going to see if I could get a stipulation from Mr. Sheridan this morning, and that was involving the voice on the telephone, as to whether at any time he ever heard any telephonic conversations between Mr. Sinatra, Sr. and my client, Joseph Amsler. I think this goes to Counts II, III and IV -- III, IV and V, particularly, your Honor, and I have a right to know if he at any time could recognize the voice or if there at any time was communication with him in interstate commerce in connection with this matter.

"Mrs. Root also wishes to be heard.

"THE COURT: She certainly may.

"MRS. ROOT: If your Honor pleases, I join with all of the statements made by Mr. Lavine and adopt them and ask you to consider them without myself repeating them.

"If your Honor pleases, your Honor has made statements in regard to the defense calling young Sinatra, Jr. back.

I wish to call your Honor's attention to your rulings made during the period of time that Mr. Sinatra, Jr. was on the stand which precluded any further inquiry, and I believe that this was covered by the offer of proof that Mr. Lavine made.

"I would like to call your attention to page 2949 of the February 28th transcript, Volume 13. This is on line 21, the question:

"'Q Well, did you tell your father -- what did say -- strike that.

"'Had your father ever given you any instructions at any time as to what might happen if you were ever kidnaped?

"'MR. SHERIDAN: Objection, your Honor. My recollection is that the identical question was asked about while this witness was on the stand.

"'THE COURT: It was, and I wondered why it wasn't developed. It will not be developed now. Objection will be sustained.'

And so on down. And I include page 2950 and your Honor's rulings therein, without taking the court's time to go into all the identical questions, and as to all of the objections made by counsel and the court sustaining them over to line 18 on page 2952.

"It is the contention of Mr. Irwin -- and I believe that I announced this at my opening statement, what we believed was the motive back of these alleged complaints

of kidnaping as based by the action of young Sinatra, Jr., and that this was purely for the matter of publicity.

"You will recall, I am sure, if your Honor please, that during the time of the cross examination I laid a foundation in regards to questions asked as to whether or not certain sales of stories had been made to Life Magazine and to another international magazine.

"Because of not having the information fully developed until my trip to Reno yesterday I was not in a position to further cross-examine in that regard.

"I will state to your Honor, though, I consider that we did not waive it under cross examination, we can present it in the case in chief.

"At this time it is our desire to have Mr. Sinatra, Sr. here for that purpose, and I therefore feel, although my co-counsel feels that they would like to have a conference before asking your Honor to rule, I personally feel that we are entitled to that ruling as of this time."

Warning to the People:

They Shall Not Know

Because in their expressed opinion the "dignity" and the "decorum" of the Federal Courts in the city of Los Angeles might be disturbed, the Federal judges of this area have clamped a lid on the freedom of the press.

The local Federal judges, in a ruling which is bound to reverberate across the nation, have issued an order which bars newspaper photographers and radio and television broadcasters not only from the Federal courtrooms here, but also:

The order prohibits the press photographers and radio and TV broadcasters from the entire second floor of the Los Angeles Federal Building, and from hearing rooms One and Two on the first floor of the United States Post Office and Federal Building.

This means that these photographers and recorders are not only denied their right to conduct their business of news and photography gathering in courtrooms, but also in the "environs," which in this case means all corridors on the first and second floors which can lead to court or hearing rooms.

Now just how far does the power of the Federal judges extend in their autocratic denial of

the news of the proceedings of the Federal courts? The Federal courts belong to the people. The courtrooms and the salaries of the Federal judges are paid by taxes from the people.

How far can Federal dictators go in deciding where and when the press—which is the media which transmits the news to the people of the proceedings of the people's court officials—must operate to obtain the news?

If the Federal judges can dictate that newspaper photographers cannot appear in or traverse Federal Building corridors, how much further can they proceed? Can they block off Main Street, on which the Federal Building is located?

The press does not in any manner attempt to persuade or sway any of the proceedings in Federal courtrooms. All it tries to do is record the facts as they are divulged and transmit them to the millions of people who read the newspapers or look at or listen to radio and television.

There must be some limit to the use of Federal restriction on the freedom of the press which is guaranteed in the United States Constitution.

SUMMARY OF TESTIMONY OF

JOHN NATHANIEL FOSS

DIRECT EXAMINATION

On December 8, 1963, John Nathaniel Foss had occasion to see Frank Sinatra, Jr. somewhere in the vicinity of 7 o'clock in the evening at his room at Harrah's South Lodge (R. 432) where he and a band had been engaged at Harrah's Club at Lake Tahoe, with which band Frank Sinatra, Jr. was the singer and the lowest on the marquee.

Dinner was brought to the room. (R. 433) During this period Frank Sinatra, Jr. attempted to make a phone call to Mr. Barzie, who was the manager of the band. During the two hour period he answered the phone once. (R. 433) Somewhere between 1 o'clock and 8:35 Mr. Sinatra was on the phone but not a full minute. (R. 434) There was a knock on the door and Frank Sinatra, Jr. said "Come in". The door was unlocked.

The man entering the room carried a cardboard case which appeared to be a wine case type. (R. 435) He took a few steps. Later the witness said he saw the figure of a man standing outside. Then he glanced back to the man who had entered the room at first and noticed he was holding a revolver, at which time he ordered Frank Sinatra, Jr. and himself to lie down on the floor on the other side of the bed, which they did without too much hesitation. (R. 436) The man then proceeded to tape Foss's

wrists behind his back and told him to keep his eyes shut. He first asked Frank Sinatra, Jr. where the money was before he began taping his hands and he said "The money is over there." While his eyes were being taped the second fellow suggested to the first fellow that he should hit Foss and the first man said "No, Joe. We don't want to hurt anyone", or something to that effect. (R. 437)

They got Frank Sinatra, Jr.'s clothes together. He wanted to put on some socks, but they apparently didn't want to take the time to look for them because they said "Forget about the socks", or something to that effect. The first man told Foss that if they got caught before they got to Sacramento it would be serious for Frank. These weren't his exact words. Also, he instructed Foss to wait ten minutes before he summoned any kind of help or any authorities. (R. 438) Then the three left the room and the door closed and he heard them walk off. In a matter of seconds he had worked his hands free and then he heard the door open again, the first man entered and came over and asked where the phone was and he heard sounds like the phone was being ripped. (R. 438) The man said "Give us five minutes before you call anyone", then he left the room. (R. 439) The lights in the room had been shut off except the bathroom light.

He began to take the tape off of his eyes, which didn't take long. He went to see if he could see anyone outside and he heard a car drive off. He saw no one.

He proceeded to the apartment of the manager and told her what had happened and had to repeat it several times.

(R. 439) Then her husband appeared. It was around five minutes before he saw the manager. It was snowing.

The temperature was around 32 degrees. (R. 441) No money was taken from him.

It was stipulated that the first man, who was identified, was the defendant Barry Keenan. The witness did not see the second man's face. (R. 433)

CROSS EXAMINATION

Keenan was wearing no disguise of any kind. (R. 450-451) He directed statements at Foss. Foss had come with a windbreaker and Sinatra left with it, a Navy blue one. (R. 454) Foss told Mrs. Moore when he saw her that Frank Sinatra, Jr. had been kidnaped. (R. 458) He told Mr. Moore, her husband, the same thing. (R. 458) When Foss saw Mr. Barzie (he was the manager of Sinatra, Jr. and manager of the band) he told Mr. Barzie someone had taken Frank and he was gone. (R. 461) Barzie asked him if he, Foss, was kidding, or something to this effect, and he repeated that Frank had been kidnaped. (R. 461) He did not know whether Mr. Barzie said anything. He and Mr. Barzie looked in the room to see if anything was missing. All they found missing was his jacket and Frank's clothes. They just stayed in the room very briefly and then he went back to the office to wait for the

authorities. (R. 463) The witness made no effort to go to the next room at any time, which was occupied by Mr. Barzie. (R. 474-475)

Foss and the Tommy Dorsey Band, with which Frank Sinatra, Jr. was appearing, had arrived about December 1st. At one time he had discussed with Frank Sinatra, Jr. that he thought it was regrettable that he himself hadn't been a bit more popular and had not been received a bit better. (R. 495) He believes he and Frank Sinatra, Jr. had discussed it. (R. 495)

SUMMARY OF TESTIMONY OF

FRANK SINATRA, JR.

DIRECT EXAMINATION

Frank Sinatra, Jr. testified that he is the son of Frank Sinatra, "the world known entertainer". (R. 518) He is 20 years old and his home is in Los Angeles. He said he had taken his education at the University of Southern California, at the Arizona State University and U.C.L.A. (R. 518) He is presently employed by the Tim Barr Amusement Corporation with their home offices in New York, that he is a professional entertainer and that he started his singing with the Tommy Dorsey Orchestra on May 2, 1963. They were in Phoenix from October 31 to November 11 to entertain at the Arizona State Fair. He was with them for 7 days. The engagement began two days before the assassination of President Kennedy and lasted until the first of December and then they went to the Ambassador Hotel in Los Angeles. (R. 521) Then he travelled to Stateline from San Francisco to Harrah's Club at Stateline, California, where they were working. He stayed at Harrah's South Lodge, which is across from Harrah's Club and he occupied room 417.

On the 8th of December, 1963, at approximately 7 o'clock that evening, he was in his room when he was first visited by Mr. Tino Barzie, the manager, between five and six o'clock and later his friend and fellow

musician, John Foss, a trumpet player with the orchestra, came and stayed until 'we were interrupted'. This was about 2-1/2 hours. The waiter brought up food. (R. 524) The room was on the second floor. There was a knock on the door and he said "Come in". A man opened it. He was approximately six feet tall, dressed in a ski parka with a hood covering his head and only his face was visible. He was carrying a wine box bearing the name Manischewitz. His reaction was that the man was between 20 and 26. (R. 526)

The man said "Are you Frank Sinatra, Jr.", to which he replied "Yes". The man said "I have a package for you", which he placed by the television set, on the carpet. He removed a leather glove from his right hand and produced a small caliber revolver. (R. 527) He pointed it at Mr. Foss and Sinatra. He said "Both you guys lie down on the floor and nobody will get hurt." For a moment Sinatra stared blankly at the weapon because he felt somehow perhaps this was some kind of a very bad joke. (R. 529) He and Mr. Foss both laid down on the floor. They were instructed to keep their eyes closed.

The man said "Where is the money?" (R. 529) and Sinatra said "What money?" He told him there was money in the passport case on the desk. (R. 530) It had \$20 in it. After that he thought he heard the man going into the passport case. (The answer was stricken. R. 531)

A second man entered. The first man said "We have

to take one of these guys with us". He was first aware of the second man when he was ordered to lie down. (R. 532) He didn't ever see the second man. At the time he was only wearing shorts and a Tee shirt. They asked him where his clothes were and he was handed his shoes and a pair of trousers, and Mr. Foss's light nylon windbreaker jacket. The man reached in the closet and got Sinatra's heavy winter topcoat and told him to put it on. He did.

After he was completely dressed they proceeded across the parking lot to an automobile. One of the men was holding his arms. As he bumped into the car one of his hands, which was in front of his eyes, went forward and revealed an automobile, a two-door sport coupe. He got in the back seat. He was not tied at any time. He still had his hands over his eyes. (R. 537) After he got into the vehicle some man handed him two small plastic capsules and an army type canteen and said "Take these two pills". The man said they were sleeping pills. He took them and then he had a cloth sleeping mask. (R. 539) This was immediately after the car started. After the car pulled out of the parking lot he had no idea where he was going. (R. 541)

He denied having any knowledge of the two men coming into his room prior to the occurrence. (R. 541) He only saw the first man in the room (indicating Barry Keenan, R. 542), not appellant here.

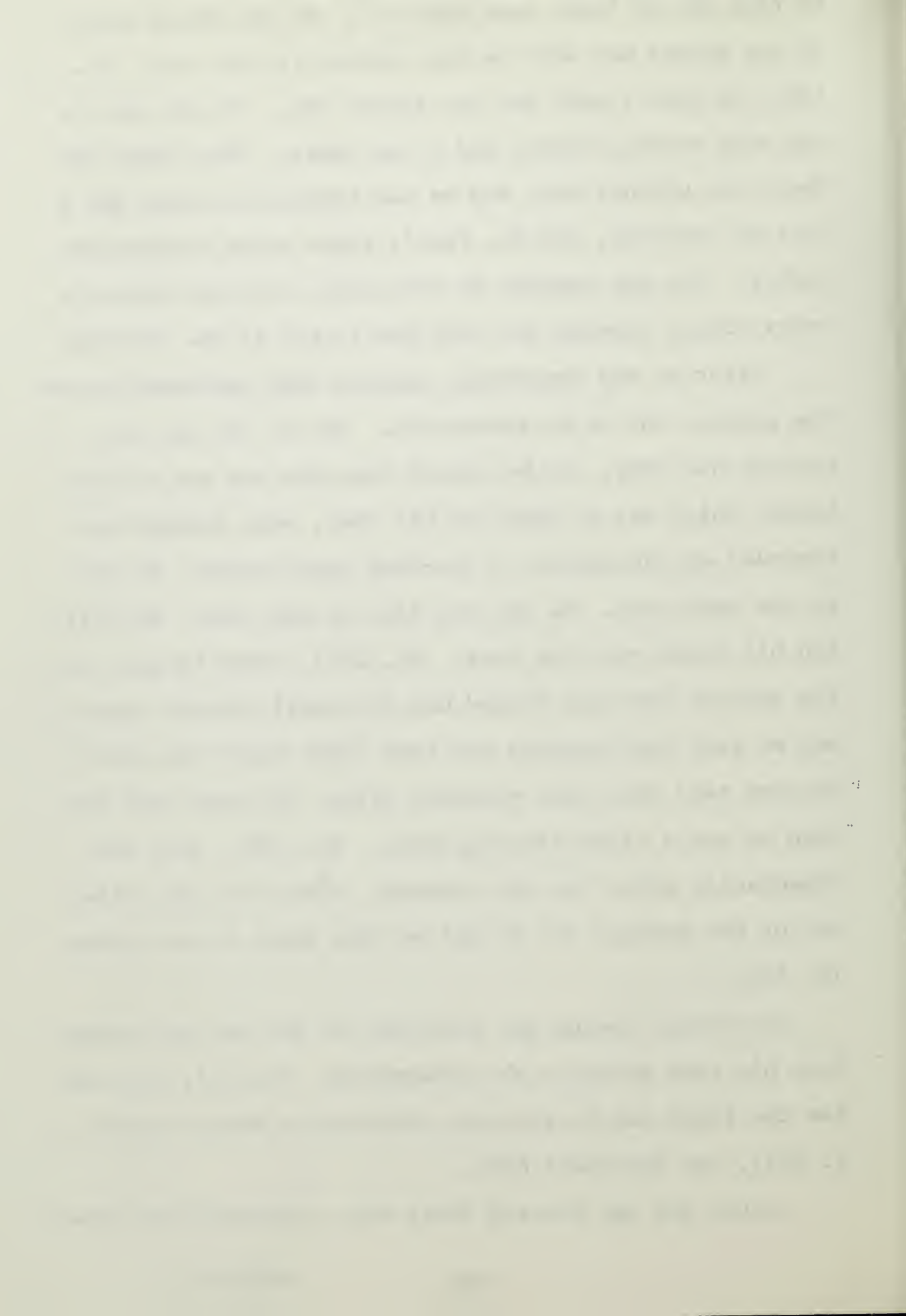
After the car started there was a conversation between

the two men in the front seat. The first man said "They better not catch us before we get to Sacramento". The other man did not answer. (R. 544) It had begun snowing about 6:30 that evening. The temperature was in the neighborhood of about 20 degrees. (R. 545)

He was told to remove his blindfold and did so. (R. 545) He was alone in the back seat but there were various articles of clothing lying and hanging there.

He had on a gold signet ring which he first saw on his seventh birthday. It had his initials on it. He took it off shortly before they came to a stop and said, on his own, "I told the driver of the car that this ring was my signet ring bearing my initials and that if we were stopped by some kind of law enforcement agency that perhaps a policeman with good eyes might recognize the initials." R. 548)

The first man said "We are coming to a roadblock. You lie on the back seat there and pretend that you are asleep and play it cool and nobody will get hurt." (R. 548) He didn't recall if anything else was said. It was at that time that he took off his ring. Before coming to the first stop he was told that if he was questioned he was to use the name of John Wade. (R. 549) He replied that perhaps the best way to pass this roadblock was that if any policeman stopped the car that they were in they could tell the policeman that they were friends, that they had been to a party, that he had had



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too much to drink, that he had collapsed on the back seat and they were driving him home. The car pulled up to a stop. (R. 550) Both men immediately climbed out of the automobile. He had no blindfold on. He could hear them get out of the vehicle. He could not see the man from the passenger side moving without turning his head and making it obvious to both men that he could see.

He could only see the man from the driver's side of the car, who proceeded back along the left side of the car to the trunk area. When the automobile stopped both men immediately climbed out. One of the men at this time apparently went around. The first man said "Here come the cops". He did nothing. He lay right where he was. (R. 551)

He heard a motor drawing near from the opposite direction. Looking out he saw the black top of a four door sedan which was illuminated brilliantly by the revolving red beacon. (R. 553) He heard the policeman get out and ask the first man, who was around by the open trunk of the car, what he was doing. He replied "We only stopped to remove the chains from our car". The policeman asked if they noticed any other cars pulled over to the side of the road. The man answered "No." The policeman returned to his car and drove away. The policeman did not stick a flashlight into the car. (R. 555) At no time while at that location did he talk to the policeman.

He was told that they were stopped at a roadblock.

It was about 2/10ths to a quarter of a mile from where they were first stopped to when they got to the roadblock. When they got there the passenger right window was open and a man's voice said "You had better stop or I will blow you right out of there". The vehicle had stopped. (R. 558) He did not know whether the men in the vehicle had discarded the gun. (R. 559) He did not know whether an alarm had been given in relation to him. He had had experience with roadblocks before. (R. 561) At no time that the car was stopped at the roadblocks did he make any attempt to escape. The thought had entered his mind and he had decided against it. (R. 562)

"Q. At the time you were taken from your room, did you in any way consent to leaving your room with those men? A. I offered them no restraint."

"Q. At the time you were at the room, when the men were there taking you out of the room, did you at any time say anything to them in substance or effect that you were willing to go with them? A. No, I did not."

"Q. Did you voluntarily go with them, with the men? A. I only followed the directions they had given me. (R. 563) ... My state of mind at the time that I was taken out of my room was the fact that immediately prior to the events which are relevant to this lawsuit, I was helping my friend, John Foss, who had a very serious emotional crisis. His emotional crisis, which is completely irrelevant to this case. It is just a personal thing that he

was having problems. He was not in a good mental state to begin with when this whole business took place, and so I decided to cooperate with these men only because his life as well as my own was in jeopardy if I refused the demands that they made. ... And so as I answered your question, sir, I merely followed their directions and proceeded with them. I gave them no verbal consent about leaving the room, but I did cooperate with their demands and made no restraint against going with them."

Sinatra was allowed to testify on direct examination as to his state of mind at the time the car pulled up to the roadblock. Then he testified that they drove approximately 1-1/2 hours. He was told the second man was in the trunk. They felt that if any alarm about his being missing had gone out, the police would look for three men in a car. The first man believed that by putting his companion in the trunk he would not be caught because there would only be two in the car. (R. 567)

The car stopped and another man joined them. They woke up a general store type proprietor to buy gasoline. (R. 568) Sinatra was not blindfolded and not tied up. He did not try to get away. He surmised the other man was still in the trunk. A couple of times both men got out of the car, a couple of times only one.

There was not more than one roadblock to his knowledge. He slept during the night, but couldn't say how long. (R. 579) The first man said if everything looked

good they would release him when they reached Sacramento. Later he said Sacramento would be too risky, they would leave him at Oakland Airport. He said if they released him there he could take a plane to get back to work on time for the fourth show. (R. 571)

There was only one stop for gasoline. He was not blindfolded on the trip but the blindfold was placed on him during daylight. (R. 572) When he got out of the car he was guided up a small step into a building. He sat in a padded arm chair.

There was conversation and for the first time Sinatra said "What is this?" The first man said "You are involved in a major kidnaping" and Sinatra said "Kidnaping for what purpose? to which he replied "For the purpose of money". Then Sinatra asked "Money from whom?" and he said "Money from your father". (R. 574) During the time he was there he slept and he asked several questions: how long he was to be held captive (R. 576) and they said something to the effect "Until we get the money".

He said he could identify the car, a 1963 Chevrolet Impala SS two-door sports coupe, white with blue interior. (R. 577) The radio was on most of the time. The conversation was that these men were simply executing a plan for the higher ups. (R. 579)

He declined to give his mother's phone number. He talked to his father three times on December 10. (R. 584) He was informed his father was in Reno, Nevada. The

receiver was given to him. He was told Joe and Barry had gone out after the money and the third man said he had bad news for him because Joe had disappeared. (R. 591) He said they couldn't release him until Joe was found. He was fed hamburger and some cole slaw and baked beans and Seven-Up to drink. (R. 591) He had some brandy on Monday night. Later he asked for some more and he was given more brandy. He didn't recall whether any of the three men drank anything alcoholic.

"The No. 3 man made it quite clear to me that so far as he was concerned, he would like very much to dismiss me, but that No. 1 man told him to hold onto me. But then he did finally decide to dismiss me and he expressed some doubt about really thinking it was the right thing to do inasmuch as the fact that he was using his own car to take me away in. So then finally I guess he decided regardless of what, he wanted to dismiss me, release me. So I was placed along the back seat of the car. He started the car and drove away. (R. 593) He said, 'Where' -- we had talked earlier about a place. He said he was not familiar with the Los Angeles area, that he wanted a place to release me where there were not too many people around ... so I recommended to him the area of Mulholland Drive off the San Diego Freeway, which spans the length north and south between West Los Angeles and Van Nuys", where he was familiar with the area. He was lying down on the back seat and told the man where to

leave him off. He told the man how to get there. After he got there he was let out of the car. It was dark. He picked the spot on Mulholland Drive off-ramp at the crest of the exact top of the Sepulveda pass.

The man thought it was awfully dark there and asked if he would be all right. Sinatra said "Isn't this what you wanted? Because in fact there were no people around and there was no lights, no buildings, no nothing." He was let out of the vehicle which sped off. He removed the blindfold. (R. 599) He walked across Mulholland Drive to Roscomare Road, and turned into Bel Air where his mother lives. It was 2:55 a.m. He yelled at the driver of a Bel Air patrol car and they got together. (R. 602) The driver took him first to the Bel Air Patrol Station, at the entrance to Bel Air Gate No. 1, off Sunset Boulevard, and then, at his own suggestion, he got into the trunk of the vehicle. (R. 604)

When he got to the house at 2:55 a.m. (R. 607), the first person that he spoke to when he got out of the trunk was his father. He said "I'm sorry, Dad".

Mr. Sinatra said he had not seen Mr. Foss from the time he left on December 8 until he saw him outside of the court. He said he was not mistreated nor were any threats of any kind made by anybody. (R. 626) The only threat that was made was that he told them that if he was not released by a certain period that he was going to kill both of them and that was the only way they could stop

him from killing them would be by killing him. (R. 626)
He said the two men assured him they were larger than he was and that he would be easily subdued. He was interviewed by the FBI almost immediately after he returned home. (R. 629)

He said there were times when he was frightened and there were other times when he was angry during the period. (R. 633) He stated that from December 8 until he was released, none of it was a publicity stunt or a hoax. He denied that he had any involvement in making arrangements in advance for any of that activity. (R. 634)

CROSS-EXAMINATION

Sinatra testified he only saw the gun once, in the room. (R. 635) He could not tell whether it was loaded or not. He was never tied or gagged. He said the No. 2 man had his right arm only for the purpose of leading him down the balcony because he had his eyes shut. (R. 647)

Mr. Foss had been drinking beer prior to the knock on the door. He had stated that Mr. Foss was pretty well loaded. (R. 649) He was trying to sober Foss up, that was why he ordered dinner. He ordered four beers with the meal. (R. 650)

Just after the car started Sinatra said "You won't believe me but I hope you guys get away with this. I know what it's like to be afraid. You have really got guts." Asked if he said "Things like this are always

happening to me. John probably thinks it is a joke.

He is used to this type thing," he admitted he believed he would make a statement like that.

His testimony as to the ring and the events at the roadblock was substantially the same as in his direct testimony. Asked if after the policeman had left in his car he (Sinatra) had said "That s.o.b. Who in the hell does he think he is?" (R. 670), he replied "That is correct. I made that statement".

"Q. Then you said 'Kooks like that bug me. If I ever have the power, I'll see that he's taken care of.

A. It is something to that effect, but when I said that, I did not indicate this particular policement".

He admitted he said 'You guys don't have to worry about me. I'll keep -- I'll help you. Don't worry about roadblocks.

He did not know whether the police every looked into the trunk of the car on any of the occasions. (R. 672) The car stopped on say five or six occasions. He testified again as to stopping for gasoline. In a general running conversation, Sinatra made the statement "things haven't been too hot for me lately. I have been only netting approximately \$100 per week." (R. 684)

He said he had been approached by Life Magazine for the purpose of issuing his personal feeling about being in such a position. He refused their request. (R. 695) He was approached by several other magazines,

he didn't recall who. He said they had not approached him personally but the Sinatra Enterprises office, which is a corporation of all his father's businesses. (R. 697) He learned about it from the telephone operator and his father's secretary, who had both received various calls from different publications, both legitimate and smear sheets. He didn't know whether they had offered money or not, but they had offered interest in his story. He realized it was only a question of time before it would appear in print. He denied that it was discussed on an occasion prior to December 10 that it would be beneficial to his career if an event such as a kidnaping would occur. (R. 699)

He denied he was making a grand appearance for television and radio. There were probably at least 50 newspapermen there when he appeared. (R. 703) He didn't know how many television people there were. All the major networks.

He denied knowing Dean Torrence. (R. 705) He said he had been in the ROTC Training Corps. (R. 709) He made no effort at any time while he was sitting in the back of the car to reach over and grab the man in front of him or the keys. At no time did he attempt to identify himself to the police, nor did he attempt to get out of the car at any time.

"Q. You were consenting to go along without any disturbance, weren't you? A. That's correct."

"Q. Again you were consenting to go along, were you not? A. That's right." (R. 727)

He said he had heard by the proverbial grapevine there was a rumor that he had received an offer of \$65,000 for an account of this case. (R. 729-730) He admitted that since the occurrence he has appeared on the Ed Sullivan Show in London and various other cities.

When he saw his father it was about 2:55 a.m., December 11. When he met his father he said "Dad, I'm sorry." At no time did he ask his father to put up any amount of money in his behalf.

He did not give Mr. Irwin the number of Vicky London. He denied hearing the No. 3 man talking to Miss London.

REDIRECT EXAMINATION

He testified he had asked one of the men to call Lake Tahoe and tell the band manager that he would be back to complete the rest of the show that evening. (R. 941) There had been conversations to that effect.

He said he thought it was some time after the road-block incident, probably in the mid-hours of the morning of Tuesday that he turned the ring over.

He again denied that it was any kind of a hoax or any kind of a publicity stunt. (R. 946)

RECROSS-EXAMINATION

He admitted that he was under no moral compulsion to

tell the truth while he was with the men and he was telling them fictitious stories. (R. 947) That he was telling them untruths. He was doing so only for the purpose of preserving his life and well-being. (R. 949) Asked what untruths he told them, he said "I told them at no time did I feel any personal animosity toward the accused, which in itself is an untruth. I very definitely felt a personal animosity toward them... I shook hands with these men because they could very easily have hurt me and they didn't and for that I was grateful". (R. 953)

He stated he was confused about the ring. (R. 958) "It seems as though I was wrong in saying that -- I took the ring off before the roadblock as such. Perhaps it was merely confusion on my part because of the fact that every time during the remainder of that trip that night which lasted from 9:30 until it was daylight every time that No. 1 man saw blinking lights ahead he said 'I wonder if this is another roadblock. Are we coming to another roadblock/' That was his first idea. Perhaps this thought is that had stuck in my mind." (R. 958)

SUMMARY OF TESTIMONY OF

FRANK SINATRA, SR.

DIRECT EXAMINATION

He stated he resided at Palm Springs and that he was an entertainer. (R. 1317)

On December 8, 1963 he received a call and left Palm Springs at approximately 11 p.m. and went to Reno to the Mapes Hotel. He authorized the FBI to open his mail and listen to a telephone call. There was a combination of one single phone with two phones tied together. He received a phone call relating to his son. He had heard the voice before earlier on Monday morning, December 9; then he got another call just past noon.

He left the Mapes Hotel and went to a gasoline station in Carson City (R. 1321) and then at a second service station he had another telephone call. He was accompanied by Dean Elson, an FBI agent. (R. 1321)

He flew down to Los Angeles and went to Mrs. Sinatra's home in Bel Air (R. 1322), arriving shortly after 9 o'clock. He went to a service station on Santa Monica Boulevard and Camden, then returned to the Nimes Road address of Mrs. Sinatra. (R. 1323)

The voices on the telephone, the one on Monday at 4:45, the one on Tuesday at 9:05, the two in the gas station in Carson City and the one at the Nimes address and the one in the gas station in Los Angeles and the one

later at the Nimes address were all the same. The gist of the calls was "I have got your boy". He remembered asking what he wanted and he said "I'll let you know later". The first call was brief. (R. 1330) At the time he gave his consent to intercepting the telephone calls his attorney, Milton Rudin, was present.

Around 9 o'clock he received another call. He spoke to the same person and then to his boy. He spoke to the voice and asked him what he wanted and he said "Money". (R. 1331)

He went to Carson City, driven by Elson. (R. 1334) When he got there he used the pay phone and wrote several lines. The voice on the phone said he wanted \$240,000 in the following denominations: (Exhibit 48) 700 - \$100 bills; 700 - \$50 bills; 4000 - \$20 bills; 4000 - \$10 bills; 3000 - \$5 bills. He was told that it must be used money and no more than eight in a series in a package 22 inches high. (R. 1339)

He received instructions where to go. He was told that the courier should have a driver's license, note paper and a pencil, a dollar in dimes, a dollar in quarters and \$200 in cash, should be well acquainted or familiar with the Los Angeles downtown streets. (R. 1343) He was asked for Mrs. Sinatra's number and gave it. He was told he would receive further communications.

He flew from Reno to Los Angeles and landed at Burbank. The FBI was with him. (R. 1345) Before he left

the Mapes Hotel he gave instructions to Mr. Rudin about the sum of \$240,000. (R. 1346) He was told that a courier should deliver the package of money or rather should go to the Western Air Lines counter. (R. 1349) He was to turn around facing away from the counter to a bank of telephones and walk to the one on the far right where he would get a call. When the phone rang someone would say "This is John Adams" and he was to answer "Patrick Henry". (R. 1351)

On this particular occasion he talked to his son. He was satisfied that it was his son's voice. He was given guarantees that when the money was delivered that three or four later they would deliver his boy or he would be notified where he would be. (R. 1352)

Asked if he personally made arrangements for the \$240,000, he said "Oh, I guess you might say I did. I instigated the arrangements. Then Mr. Rudin followed it."

"Q. And you didn't personally count out the money, did you? A. No."

"Q. Did you ever see the money, sir? A. No, I didn't."

"Q. Did you see any sort of container for the money? A. I did." (R. 1352)

He identified a bag that was delivered to Nimes Road to in turn be delivered by a courier, a federal agent.

The call that came on Tuesday said something had gone wrong, nobody had shown up. He was told his boy had

been dropped somewhere in the area of Mulholland Drive and the San Diego Freeway and was advised to get him because it was cold. The voice said he wished to hell he had never gotten into it but it was too late to get out and he was sorry.

He went over to Mulholland and the San Diego Freeway. (R. 1355) He did not find his son and returned to the Nimes Road address, where he first saw his son in an automobile driven by a guard. He was getting out of the trunk of the automobile. After spending a few minutes together, the boy was interviewed by the FBI.

He denied the episode was a hoax. He denied he had arranged to have his son taken from Stateline, California and brought down to Los Angeles or had in any way arranged for his son to have publicity for the picture "Four For Texas". He denied that his son ever told him it was a hoax or publicity stunt.

CROSS-EXAMINATION

He said the first thing his son said was "I'm sorry, Dad." (R. 1361) He told of his conversation on the phone with his son and he believed somebody asked him to put up some money.

There were a large number of newspaper, radio and television people at Mrs. Sinatra's home. He made a statement to the press; he didn't hear his son make any. (R. 1367) He denied he had given him instructions on his

first appearance to the public that he must have a good press and good publicity. (R. 1373) He acknowledged an article in Life Magazine of August 23, 1963 in relation to advice he had given to his son regarding the handling of the press but denied he ever gave him any advice at any time on how to handle publicity. (R. 1374)



DEAN TORRENCE

DIRECT EXAMINATION

He testified he is a singer and that he lives with his mother. (R. 1837) He, Barry Keenan and Joseph Amsler had gone to school together. (R. 1841) He had never met Frank Sinatra, Jr. or Frank Sinatra, Sr.

He had a stock trading relationship with Barry Keenan and they had a safety deposit box together in the United California Bank, 10210 Santa Monica Blvd. He had given money to Keenan from time to time and Keenan owed him \$1200 (R. 1848) over a period of four or five months. The borrowing first started during the summer of 1963. The largest amount he loaned Keenan was \$500. (R. 1850) He testified that he had no knowledge of any kind, prior to December 8, 1963, about the kidnaping of Frank Sinatra, Jr.

CROSS-EXAMINATION

He denied Mr. Keenan handed him \$25,000 in a paper sack while he was washing his car on December 11, 1963. (R. 1869) He denied that Mr. Keenan came back on Friday and said that "Capture is imminent, you had better give me back the money" and that he returned it to him at that time. (R. 1870)

He said that Keenan was his best friend and had been

for about six years prior to that time and he had given him approximately \$1200. (R. 1871)

He said he first heard about the kidnaping on the radio. He said Keenan didn't tell him about going to Tiajuana for guns and about being arrested for possession of firearms. (R. 1873)

After the noon recess the government put him back on the stand and he admitted that he made up some stories, that he did know about the so-called kidnaping, that he did get some money and gave it back.

He said he first heard of the kidnaping of Frank Sinatra, Jr. "probably in about October, I guess" (R. 1976) He heard it "From Barry Keenan". No one else was present. "He just said he was going to be involved in a crime, a major crime, and that he would like to tell me about it. ... He told me about how he was going to abduct him, and things of that sort." (R. 1977)

"Q. Did he tell you anybody else was in on it with him? A. No, sir."

"Q. Did he ask you to go in on it with him? A. No, sir."

"Q. He just discussed it with you? A. Yes." (R. 1978)

He said he would be glad to loan Keenan money and keep him living if he didn't go through with it, but Keenan said he would rather be dead if he didn't have

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the money. (R. 1980)

"Q. On this occasion on December 11 when Mr. Keenan came to your home, did he have any money? A. Yes, sir"

When he brought the money in he said "It is in your shower" and then he left. He left the paper bag with the money in it. Torrence didn't count it. Friday Keenan said "Met me and you can give it back" and he met him and Dennis Gray in Culver City and gave him the money back.

Torrence said he did not participate in the kidnaping of Frank Sinatra, Jr. in any way. He said he was told to tell the truth but he did not tell the truth when he first took the stand and he had a change of heart, a change of mind, after he left the stand and wanted to correct his testimony and he decided he'd better confess up. (R. 1984)

On cross-examination he said no one on the defense side had lied to him. He said that he did not count the money and he admitted returning the money to Keenen on December 13. (R. 1897) He denied receiving the money for financing the kidnaping. (R. 1989)

He said Keenen had told him about the kidnaping but "I thought it was a story." (R. 1990) He said Keenan had a booklet and it had the phone numbers that were to be called and how the whole plan would be worked out basically. (R. 1992-1993) He only saw a couple of handwritten pages and didn't know how many pages it had. He didn't really think they would do anything like this. He said

Keenan had said he had a fairly good 50-50 chance, which he (Torrence) didn't think was worth it at all. (R. 2000)

SUMMARY OF TESTIMONY OF

RONALD BRAY

DIRECT EXAMINATION

Bray said Keenan had a conversation with him, possibly around the early part of October, 1963, as to whether he would like to make \$10,000. Keenan said "It's illegal. It requires picking up some money". Bray asked if it was kidnaping and Keenan said "Yes." Bray refused. Keenan did not tell him who the man was but said his parents had access to large amounts of money and if Bray knew who it was he would realize how fool-proof the scheme was. Later he said he might as well tell Bray that it was Frank Sinatra, Jr. (R. 2018)

Keenan asked him if he wanted to be in on "the operation", but Bray said that he did not wish to be. (R. 2019) He had further conversations on three other occasions, at one of which he mentioned the names of John and Joe and once gave him the name of Amsler. (R. 2020)

He went with Keenan to Mexico. On the way there they stopped at a gunshop, but Keenan did not buy a gun. They were in Keenan's car. Bray said he did not want to have anything to do with it. (R. 2021) Keenan said he could walk across the border and they separated. He went to a bar, and Keenan was gone a matter of hours. He rejoined him and they went home.

Keenan told him he had found the guns that he wanted

but said he had paid the man and as he was examining them a Mexican policeman came in and confiscated the guns. Barry said that on the way to the police station he had talked his way out of it. They let him go, but he lost his money. (R. 2024)

Keenan told him there were others involved in the matter, one a successful businessman and said that it was a well planned operation. To his knowledge, Barry Keenan was not a successful businessman. (R. 2025)

On the trip back from Mexico Keenan stopped to make phone calls and said he couldn't get Amsler. (R. 2025)

Keenan stayed at Bray's home in October. At that time he took some guns out of his car and showed them to Bray. There were two guns. (R. 2026) During October and November Keenan was living at different places and was using other names. He stayed at the Farmer's Daughter Motel and used the name Robert Allen. (R. 2028-2029)

On November 17, 1963 Keenan came to Bray's house with a rented trailer attached to his automobile and spent the night at Bray's house. (R. 2037) Keenan purchased furniture (R. 2038) and they took it out to a little white house in Canoga Park at 8143 Mason Avenue and unloaded it. Keenan made some phone calls and they returned the trailer.

He asked Bray at one time if he had told him who the backer was and Bray said he didn't want to know. It was right after this he was asked if he would pick up

the money. (R. 2043) He told Bray that he would pick it up at the airport from a man, get in a cab and make several changes. There was some conversation about clothes.

When Bray called Keenan at the Farmer's Daughter Motel he (Bray) gave fictitious names, Alain Gerbult and Bill Donais. (R. 2046)

On December 7, 1963 Keenan called him from Lake Tahoe about 7 in the morning and woke him up. He asked him to call a person named John and ask John to call Keenan at a certain number. (R. 2050) He called the number and talked there to a woman on Monday, December 9. The word "kidnap" was not used in the conversation when the call came. He was not aware that Frank Sinatra, Jr. had been taken from the hotel room. (R. 2054)

Keenan did not ever tell him that the proposed plan of kidnaping Frank Sinatra, Jr. was a publicity stunt or a hoax; he did use the word "illegal". (R. 2060)

CROSS-EXAMINATION

"Q. Then when you went out and made these two trials runs, you knew that this was in cooperation with this so-called operation, didn't you? A. I suspected it. I imagine I basrally deep down knew, but I really didn't think I was doing anything that was drastically wrong. I wasn't having anything to do with the actual crime". (R. 2130)

Keenan told him it was a foolproof plan and he

didn't think he would be caught. He did not recall his saying that Frank Sinatra, Jr. would cooperate.

When Keenan returned from Phoenix he had some guns. He knew also that before he went to Tiajuana he had a fairly large sum of money. (R. 2115)

He told Bray different things about it, but Bray said "No." There were two trial runs in connection with the matter in which Bray participated. (R. 2139)

SUMMARY OF TESTIMONY OF

JOSEPH CLYDE AMSLER

DIRECT EXAMINATION

Defendant Keenan did not take the witness stand but defendant Joseph Clyde Amsler took the stand and testified to his early days in high school and having met Dean Torrence, having been a member of the Barons and having been acquainted with Nancy Sinatra through the Tierres. (R. 2991) He was honorably discharged on September 21, 1962 after three years and eight months in the Navy. (R. 2992)

He worked as a diver in Catalina for a man named Al Hanson, who had a son named John Hanson. (R. 2993) They were employed at Santa Barbara, California, with Veteran Fisheries, an abalone fleet. His employment terminated somewhere around the middle of November, 1963, because of a horrible run of bad luck.

He saw Barry Keenan first after July 4th. Amsler was married October 21, 1963. He told Keenan he was looking for a job and Keenan said he thought he had a job for him and asked him to take a walk around the block with him. He said he had a perfect plan, he had researched it and other things and had everything worked out. He wanted to know if Amsler would be interested in his plan. He said it was kidnaping. Amsler told him he was crazy. "I said I think you are ridiculous even thinking about

it and I tried to dissuade him from talking about it."

(R. 2999) He didn't mention the victim's name. Amsler said he thought it was just a dream.

They hadn't seen each other since high school days. He saw Keenan again around October, about a month later, at the Barefoot Bar at the Cliff House on the Coast Highway on the Pacific Palisades, accidentally. He had come down from Santa Barbara and was there with John Hanson and Johnny Long. He was surprised that Keenan was still thinking about his plan. They talked about Keenan's 1963 Impala Chevrolet. At that time Keenan had a manila folder filled with typewritten notes, about 30 or 40 pages, bound together. He said it was the script for the operation. He said he couldn't tell Amsler too much about it but that it was foolproof and there was no chance of getting into any trouble. Amsler didn't believe him and told him he thought it was crazy for him to be thinking about this thing. He said he was actually going through the details of it. A little later in the conversation he thinks Keenan mentioned the name of the victim.

He told Keenan he wasn't interested in his foolproof operation. Keenan said there was a chance to make a lot of money and Amsler said "No." He told Amsler the person who was to be the victim of that operation was to know about it beforehand, that was why it was perfect.

"Q. Did he give you the name of the person that

was involved? A. Yes, sir. He said it was Frank Sinatra, Jr. and I asked him if it had anything to do with Nancy and he said 'No', it had nothing to do with Nancy, because that's the only person I knew. I thought -- I didn't know Frank Sinatra, Jr. personally but I thought Barry did and he said he wished I would be in on it because it would be for my good and I told him it sounded like a crazy scheme and I still wasn't going to be in on it."

He didn't tell Amsler what to do in connection with the operation at that time. He just wanted him to be with him. Amsler said 'No'. (R. 3006) That terminated the conversation. It was like someone coming up with a crazy scheme, a pipedream or something. Amsler thought someone had been pulling his leg.

This was about the middle of November. The conversation out at Castellamare was about the middle of October.

He next saw Keenan around the fifteenth of November. He had just quit diving in Santa Barbara. He told John Hanson and Johnny Long what he had heard from Keenan. (R. 3008)

When he saw Keenan again he said there was still a part in it for him if he wanted to be in it. (R. 3010) He said all Amsler had to do was follow a courier and see that the car was not followed. He offered Amsler \$2,000 for doing this. (R. 3010) He said the whole thing,

had been worked out, he had a script for it. He wouldn't go into the details.

Amsler still had doubts about being in it with him. He told Amsler he could get \$15,000 if he picked up the money. (R. 3011) It was a different part altogether in addition to the \$2,000. (R. 3012) He told Amsler to have confidence in him, that they couldn't get in trouble. He said he could tell his wife he was working for him installing transparent blinds. Amsler didn't have money to pay for breakfast and Keenan gave him \$20 and told him to tell his wife that it was for part-time employment, that he had worked for Keenan that day. (R. 3012) He saw Keenan maybe every other day and Keenan would give him, on these occasions, \$10 or \$20. Keenan would say that everything looked great, that Frank was playing at the Ambassador here in Los Angeles and that the whole thing had been set up to get him while he was here in Los Angeles.

Amsler's part in this operation was to pick up the money. (R. 3013-3014) He was assigned a specific duty but it was the date that President Kennedy was assassinated and the matter was called off. (R. 3015) Amsler thought the whole thing still was a joke. (R. 3017)

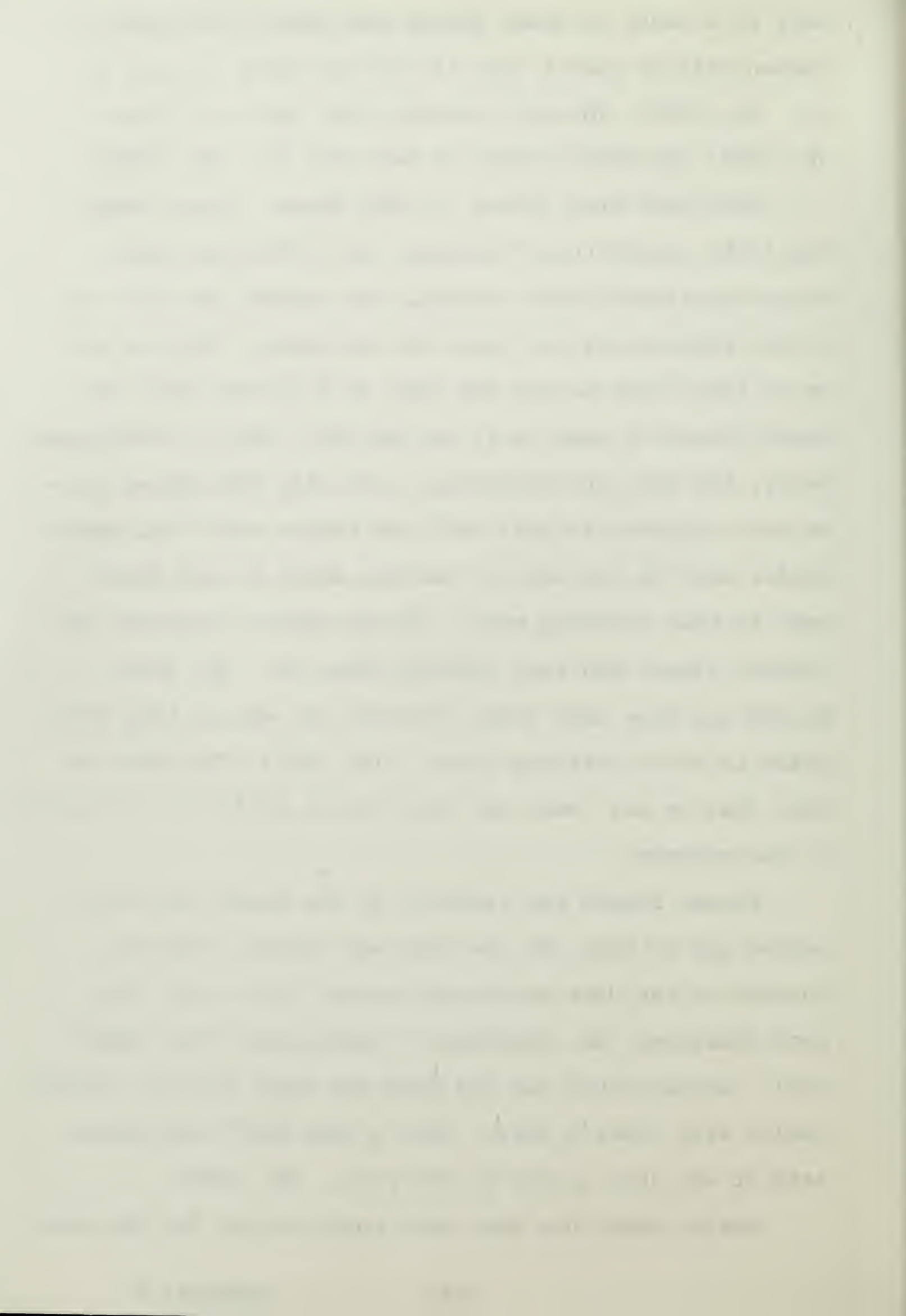
On December 3 or 4 Keenan asked him if he would like to go with him skiing at Lake Tahoe (R. 3019) and he thought it was a good idea. He said he always was able to get a job out of town. Instead of going to Tahoe, they

went to a house on Mason Street and stayed overnight. Keenan said he didn't like it and was going to give it up. (R. 3020) The next morning they left for Tahoe. (R. 2021) He didn't think he had over \$2. (R. 3022)

They went from Bishop to Lake Tahoe. Barry asked him if he wanted to go hunting. In a fleeting sense, Keenan mentioned Frank Sinatra, but nothing was said as to his whereabouts nor where he was going. When he got up to Lake Tahoe he saw the sign on a marquee that had Frank Sinatra's name on it and he said "What a coincidence. Barry, has this got something to do with the scheme you -- we were supposed to pull off" and Keenan said "Oh, maybe". Amsler said he was sick of hearing about it and didn't want to hear anything more. Keenan said to consider the subject closed and stop talking about it. (R. 3026) He did not know that Frank Sinatra, Jr. was at Lake Tahoe prior to their arriving there. (R. 3027) The first he knew that he was there was when Keenan called his attention to the marquee.

Keenan signed the register at the hotel, and when Amsler got to Room 319 the door was locked. When he knocked on the door and Keenan opened it he said "Oh, good afternoon, Mr. Gardiner." Amsler said "Mr. Gardiner?" Keenan stuck out his hand and said "I'm Mr. Allen". Amsler said "What's this. What's this bit?" and Keenan said it was just a part of the plan. (R. 3029)

Amsler asked how they were going to pay for the room.



"And he said, 'Well, if we need money get in touch with the backer.'"

"Q. Backer? A. Yes, sir. And I said, 'Well, what do you mean by that?' And he said, 'The financier of this operation.' And I asked him who it was, and he said, he commented, 'Well, you know, Dean.'"

"Q. And what did you say? A. Well, this really shocked me. I said, 'Do you mean Dean Torrence? And he said, 'Yes.' And I asked him, I said, 'How many people are in on this thing' with him, and he told me that Dean and John were in with him and that he had told --"

"Q. Wait, now. Dean is Dean Torrence? A. Yes, sir."

"Q. All right. What did he say? A. Well, I remember him saying he had told Johnny Weismuller and Dennis Gray and Bonnie Bray, and he said some other people that I didn't know. And I commented to him that I had told a few people too. And he asked me who they were, and I said John Hanson and Johnny Long. And I asked him, I said, 'Do you think it is a good idea, everybody knowing about it?' And then he says it didn't make any difference. He said everything was all worked out, everything was planned." (R. 3030-3031)

Amsler still thought it sounded like a crazy scheme and that they would get in trouble and said he didn't feel like being a party to it. The subject was dropped. He took a shower.

He put his last fifty cents in a slot machine and it

paid \$5. They built that up to around \$25. (R. 3032)

They discussed the operation again and Keenen said it was ridiculous not to go through with it and that if Amsler knew anything about it, he would be all with him, but he said he couldn't tell him. Amsler said they were broke and charging food to the hotel and it just didn't seem right to him and he wanted to go home. "Actually," Amsler said, "I decided to give up the whole thing and I'd just as soon return to Los Angeles and I told Keenan that." (R. 3034)

Amsler said "Well, that morning he said -- Sunday morning he had planned to pick up Frank Sinatra after his last show on -- it was actually Sunday morning. He was supposed to finish at around 4:00 or 5:00 in the morning. And we had been gambling that night. And he had cashed some checks up there also, by the way. And he decided everything wasn't right again. And I just flat told him Saturday morning that I wasn't in on it, and that I wanted to go home and that we were going to leave today." (R. 3034)

When he got up on Sunday, December 8, Barry was gone. When Keenan came back he said they'd make one more effort and if it didn't come off, they would leave. He said Keenan promised. (R. 3036) "He said that he was going to go over there. He said he knew where he was staying and he was going over to the room and we were going to pick him up and go down to Los Angeles. He said it would be that

evening early."

He had no money, not even a penny. He might have had some loose change, but he didn't have a dollar.

Keenan told him they were going to pick Sinatra up. (R. 3036) He didn't believe that they were going to pick him up when they left for his room. His intent was to leave. He figured this was just going to be another dead end, "a Barry's scheme, whatever it was, and that we would leave". He was, in a sense, calling Keenan's bluff.

Around 3:30 Sunday they went to Sinatra's room. Amsler didn't want to take the gun. Keenan said "You can take the gun, it doesn't have to be loaded." (R. 3040) The cartridges had been removed. He took the gun but it was not loaded. Keenan said they had to make the thing look right and he agreed to take the gun if it wasn't loaded.

He said he wanted to leave that night and Keenan had prepared the car for the trip that night. He put chains on. (R. 3041) It was snowing.

When they walked up the stairs Keenan stopped in front of Sinatra's door and started to knock. Amsler said "You are not really going to do this, are you?" and he said "Yes" and knocked on the door. A voice said to come in. Keenan opened the door.

"Q. What did you do or say? A. I said, 'No,' again. I said, 'No. No, Barry.' "

Keenan had started to enter the room when he said this.

Keenan said "Come on", and waved him through the door.

(R. 3042) "There were two people in the room who were already getting on the floor. I don't even think they saw me." (R. 3043) Amsler was dumbfounded.

Keenan asked one of them where the money was. Told it was on the dresser, he told Amsler to get it. He went over and got \$20 out of a wallet that was there. The gun was in his pocket. He did not take the gun out.

"Q. What happened next? A. Barry said something like, 'We're going to take one of these people with us'. And he motioned to Frank some way. He might have said something, 'Frank,' or whatever he said, anyway, 'put on your clothes.' And then he started getting Frank's clothes out for him and Frank started dressing."

He said they were in the room approximately five minutes. Then they left with Sinatra. Sinatra was supposed to cover his eyes with his hands. Amsler took him by the arm to lead him so he wouldn't stumble. He took his right arm and Keenan went ahead of him and they walked down to the car. He corrected his statement to say he was holding his (Sinatra's) left arm with his own right arm. They went to the end of a long balcony. Sinatra had his hand over his eyes. Sinatra, Jr. at no time objected to leaving. (R. 3045) At no time did he say he didn't want to go or anything to that effect. He didn't say very much at all. "He seemed very clam, so I got the idea that -- I guess the thing was all ready, you know --"

He opened the car door for Sinatra and told him to get in it and lay on the seat. He got in on the seat. (R. 3046) Keenan was driving. They turned right out of the driveway onto what he now understands was Highway 50, the main road up around Lake Tahoe. (R. 3047) He told Sinatra to put on a blindfold that Keenan handed him. Neither Sinatra's hands nor legs were taped or bound at any time. (R. 3051) Keenan said to give Sinatra his pills, so he did. The pills, little capsules, came from the glove compartment. He gave him an army canteen when he asked for water and took the pills.

There was nothing out of the ordinary in the conversation. (R. 3053) Keenan figured Foss would report it right away, and they were expecting roadblocks. Sinatra, Jr. suggested they pretend he had had too much to drink and had passed out on the back seat and they were taking him home. They agreed.

A little while later they came around a corner and there were red lights all over the place. He was panic stricken. (R. 3054) He jumped out and ran down the side of the mountain and into a barbed wire fence and fell down in the snow and laid right there. (R. 3054) When he came back Sinatra was still in the back seat with his legs across the seat. He did not see the police cars when he saw down the side of the hill.

When he came back in about five to ten minutes, Keenan said the police had left. He waited for a couple

The trunk was open. Keenan said the police just came and checked them out. Keenan told him he was going to get back in the car, was going to turn off the lights in a second, and that when he turned out the lights to run and jump in the trunk. He cleared a space for Amsler. That was the first time he got in the trunk of the vehicle. (R. 3057) He realized they were going by the roadblock. He took the gun out of his pocket and put it in the cowboy boot that was in the trunk.

The police stopped them and he heard a voice say "You had better stop or I'll blow you right out of that car". It was a very rough voice. Barry told him they had talked to the police up the road and thought he had been motioned on. Keenan apologized and then they started up again. (R. 3058) He didn't hear the conversation between Keenan and Sinatra, Jr.

He remained in the trunk about 15 minutes and then he got back in the front seat. Sinatra was still in the back seat. (R. 3058) Keenan talked about the cop scaring him. Frank Sinatra, Jr. said "Yes, cops like that really bug me." He said "I wish I could get even with them", or something like that. (R. 3060)

Amsler said they continued on down the road and that he was in a state of shock. By that time they had heard on the radio six or seven times that Frank Sinatra, Jr. had been kidnaped from South Lodge, Stateline. (R. 3067) At no time was Sinatra in the trunk.

They stopped for gasoline and Barry got out of the car for quite a while, maybe 15 minutes. He was afraid something had gone wrong. Up to this point he doesn't remember whether there was any conversation about Sinatra's ring. They were talking about the possibility of another roadblock and they couldn't understand why Sinatra wasn't recognized at the last roadblock. (R. 3065) Sinatra said he had a ring with his initials on it and some shart-eyed policeman might see it and that they would be sure to know it was his. (R. 3066)

During the night Frank Sinatra, Jr. slept. When they got to Canoga Park, he was told to cover his eyes and Amsler helped him out of the car and into the house. There was furniture in the bedroom, and just the two of them were there.

Amsler described their experiences at the house. From 9:30 until 6 o'clock on Monday he and Sinatra were alone. (R. 3073) During that time he was asleep in the late morning or part of the afternoon and he slept some of the other part of the day until 3 or 4 o'clock in the afternoon, when John Irwin came. Sinatra was awake when he woke up. Sinatra was on the bed and Amsler was laying on a mattress on the floor. (R. 3074) The side door was not locked. Irwin remained there that evening and Amsler slept about an hour. They all ate crackers, some sponge cake and some egg nog. (R. 3076)

Irwin left the house several times Tuesday, and

placed a phone call while he was in the bedroom with Frank. Frank talked to his father. Amsler did not talk to Sinatra, Sr.

While they were at the house they talked about their personal lives, about his being the son of Frank Sinatra, the good points and the bad ones. They talked about the publicity at that time. Amsler said this would be great for him and Sinatra, Jr. said 'Well, I don't know. It's an awful big thing.' Sinatra said he didn't expect it to be this big and he said it all depends on which way it's taken. (R. 3080)

Amsler said he was very much disturbed about what he heard on the radio and he spoke to Sinatra and said the thing seemed terrible to him and he was sorry he got involved. He said he was very disturbed and Frank said 'We all got to get hold of ourselves or none of us will come out of this'. Frank told him to get control of himself and started talking about Laurel and Hardy. (R. 3082)

When Keenan came back that night he said 'You guys should have followed the plans. You should have gone directly by the plans.' (R. 3083) Everything was arranged for letting Sinatra go that evening. Amsler and Irwin wanted to let him go because they were upset by the press and the radio. Everybody was very nervous. They discussed the matter of leaving Frank off. All of them were glad it was coming to a climax.

They discussed the fact that they might be caught and Frank said he probably would be the one that came down and bailed them out. (R. 3098) He said it to Amsler and Irwin. Prior to his leaving the house, Sinatra and Amsler shook hands, wished each other good luck and said they hoped they would meet again when things weren't in such an upheaval. Amsler had told Sinatra he would lay down his life for him, or words to that effect. Sinatra had said he wasn't worried about them but was afraid some policeman might come in and start shooting. He told Sinatra that before he would let anything happen to him, he would lay down his life. (R. 3100)

Amsler and Keenan went to Keenan's mother's house about 10 or 10:30. They went to Ronnie Bray's house and Keenan left some plans there. Amsler remained in the car. Keenan let Amsler out to pick up the money and said he would come back and pick him up. He was going to tell the courier to leave the money between two school busses. (R. 3091) Amsler became frightened by a taxi and another automobile and he ran off, vaulted a fence that surrounded the Veterans' Memorial Cemetery, went into Westwood and walked home to an apartment he used to have. (R. 3102) He stayed home until the next afternoon.

After a call from Keenan on Wednesday, Amsler took a taxi to Keenan's house. From there they went to

Irwin's house. Keenan and Irwin had all the money in the car. They went to Irwin's to discuss cleaning up the Mason Street house.

Amsler went to Dennis Gray's house, taking money in an attache case. He threw the money out on the floor. They took off the shoes and socks and tramped around in the money and they passed bundles of it around. They wanted to play Monopoly with real money. (R. 3110) He stayed at Dennis's house that night.

Keenan gave him \$100. (R. 3113) Other than this, he had not taken any money. The first time he saw the money in the paper sack was when he got to Roger Dier's apartment.

On Friday, the 13th, representatives of the FBI came and took him to the downtown office of the FBI. He was interrogated there for he doesn't know how long , and then was taken to the Central Jail. Before going to the jail he was taken to a Commissioner and then was interviewed again. In other words, he first had an interview after he left Roger Dier's apartment and when he arrived at the FBI. (R. 3117) The interview lasted about an hour and then he was fingerprinted. Then he was taken to the Commissioner and then to jail.

He signed a statement (Exhibit 59) and he was pretty upset that night. He doesn't recall if this is the same statement or not, but he believes it is. He remembers that he was there at the early hours of that morning and

and he recalls being interviewed by the FBI and that the FBI wrote the statement and that he signed it at that time and that they incorporated the details in the statement. He doesn't remember talking much. They would ask him questions, he would answer, and they would take notes. He would say he was in a state of shock.
(R. 3120)

Subsequently he was booked and there were other interviews with the FBI.

He next saw Keenan in March in the courtroom. They had a discussion about being freed on bail. Amsler told his attorney that it had already been taken care of, that Keenan was just waiting for himself to be bailed out and that he would also be bailed out. He was angry with Keenan because he had'nt heard from anyone about bail. He wanted to know what was behind the whole thing. Keenan said he wanted it keep it a secret; that he, too, felt let down. Irwin also was angry.

He told about a man Keenan met in Las Vegas and with whom he became friendly. Keenan said the man approached him with the idea of the perfect crime. Amsler said Keenan told him he was supposed to plan this whole thing and the men that he got were not supposed to know that it was a publicity stunt. He related the things that Keenan had told him. It was supposed to inspire him with confidence, but it didn't.

Amsler said he was contacted by an attorney and a bail bondsman who told him that they would pay him \$25,000 and attorney's fees and bail on the 14th of January. (R. 3136) There was also a writer. He reported the matter to the federal agents.

Amsler categorically denied that he had agreed and conspired to kidnap Frank Sinatra, Jr. (R. 3137) He denied that he conspired with Irwin and Keenan to make any calls to Frank Sinatra, Sr. for the purpose of obtaining the reward for the release of Frank Sinatra, Jr. He denied each and every one of the six counts.

